RESOLUTIONS ON MATTERS OF GENERAL PUBLIC INTEREST.

Resolution re: Throwing open of all roads to all classes—(contd.)

PRESIDENT: We will now proceed with the discussion of the resolution now before the House.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): Sir, I also rise to support the motion before the House. I was very closely attending to the arguments advanced for and against the resolution yesterday in the House. I was also listening to the learned speech of Mr. Subba Aiyar and think that he was making out a very good case for the Government. One of the strongest points raised in his learned speech is that the roads in question form part of temple property and that the custom of the locality excluded the untouchables from using the road and that, in case the resolution as now worded is passed by this Council, it will have the effect of wounding the religious feeling of the public *i.e.*, caste Hindus. I am willing to grant, Sir, if that position is established, it is certainly the business of this House to throw out this resolution. Section 11 of Regulation II of 1097 says that it shall not be lawful for the Legislative Council to enact any measure relating to or affecting—

"(1) Devaswoms belonging to or under the control of Our Government."

So, if the roads in question form part of the property of the Devaswom, necessarily it must relate to Devaswoms under the control of Government and as such this cannot be a subject to be discussed in this House.

Then again, the rules framed under this Regulation say that

"no such discussion shall be permitted in regard to any of the following subjects:—

(a) any matter removed from the cognizance of the Council under Section II of the Legislative Council Regulation; * * * *"

So taking into consideration Section 11 of the Regulation and the rules framed under the Regulation, the point is very clear. It has to be seen whether the resolution before the House has anything to do with religion. In that connection, yesterday, some of the members referred to questions of fact bearing on the resolution and they said that we will have to wait till the matter is decided by a court of law. In that connection, I have to ask who is the person who is competent to say or decide whether a question of religious character is involved in the resolution now before the House. Sir, I have read closely the Legislative Council Regulation and the rules framed thereunder, and to my mind it is very clear that this Council has no jurisdiction to decide that question; as to this point the Rule that I would refer to is clause 34 (2) which says

"If any doubt arises whether any resolution is or is not within the restriction imposed by sub-rule (1), the President shall decide the point and his decision shall be final."

Now this Vaikam question has been before the country for some months past. That is regarded as a question of interest in the country

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and I am sure that all the records bearing on the title to the property or a portion of these roads or deeds etc., ought to be a gospel to the Government and that before this question was admitted, the Government must have gone through the records and formed their opinion. I am also disposed to think that the opinion of the Law Member might also have been taken in the matter. Now that the President of the Council has thought it fit to admit the resolution for discussion, I take it that it is tantamount to a ruling that no question of religion is involved in the resolution.

MR. A. HOOGEWERF (*Nominated*): Hear, hear.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): Another point that was raised by Mr. Subba Aiyar which at any rate appealed to me was the interference in this matter by the Congress people. As Mr. Velu Pllai did, I am openly saying that I have nothing to do with the Congress or with the Satyagraha movement. I do not at all believe that Congress politics have any place in Travancore as the conditions here do not want it. I do not think that considerations of this kind should persuade this Council to veto or to accept this resolution. Apart from the religious question, I do not at all find that any case has been made out as to why the roads in question should not be opened to all classes of people irrespective of caste or creed; if any question of religious character were involved, the resolution would not have come up before this Council for discussion. If any member of this Council or of the public is aggrieved by the decision of the President, it is certainly open to him to seek redress in a civil court. Under such circumstances, I support the resolution.

MR. V. KUNJUKRISHNA PILLAI (*Chirayinkil*): Sir, I rise to support the resolution. I did not intend to speak on the resolution. But on hearing some speakers on the subject, I feel myself impelled to say one or two words. I was astonished to hear from Mr. Subba Aiyar that the road in dispute belongs to the Devaswom, that is, that the land is Devaswom property. I ask then why this resolution was allowed to be tabled for discussion in this House. The President could very well have disallowed it under Rule 38 of the Legislative Council Rules. Another point elicited from Mr. Subba Aiyar is that the aggrieved party must go to a civil court to get remedy. I think that this opinion of his is not a sound and practicable one. We are called upon, as members of this House, to protest against such horrible barbarity. So, I solemnly call upon every order of men in our country to stamp this infamous procedure. Let us perform our duty to purify our country from this deep and deadly sin.

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): After hearing the defence made by the law member and the opposition made from this side of the House, I beg to state that the legal technicalities of the problem stare me in the face and I have not been able to solve the same to pronounce a correct judgment. I am of opinion that the

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solution of the question as to whether the road is a public road or a *gramaveethi* could be decided only by resorting to a civil court. I was more or less indifferent about this demand for the removal of these prohibition boards and the opening of these few roads in question to the public at large when it first cropped up in the Popular Assembly and in the local papers. The simple reason for my attitude was that it is not after all a serious gain to the sufferings of the depressed classes. So long as the Government have accepted the general principle of the right of passage over the public roads and their admission into all public offices without distinction of caste or creed, I could not see what real gain could be had by their seeking admission to these few coveted areas which the Government have reserved. I have been to Vaikam several times and particularly so a fortnight back just to form my own impression regarding this particular question. The roads directly lead to the temple and temple only, and there is no serious disadvantage to anybody even if all the classes who do not use this particular temple do not go that way at all. Even if this resolution were carried and even if the Government were to accept it, I do not think there is any serious gain in principle achieved worth the trouble, towards the amelioration of the depressed classes. We have had several appealing descriptions yesterday concerning the very many grievances the depressed classes are labouring under and it is to our great regret that many of the high caste Hindus are still keeping up an unbending attitude. The struggle against the Brahmin autocracy has become so keen, that, unless they consider seriously and solve these problems immediately, they will be paving their own fall and the fall of Hinduism. Personally, I am not for the denial of an elementary civil right—the right of passage over the road to any class of His Highness' subjects; nor do I think there will be any serious harm done either to the Hindu religion at large or to the Vaikam temple at all, if the road in question is thrown open to all classes of His Highness' subjects.

Mr. Kumaran, in his very modest and appealing speech, has directed our attention to consider the question apart from the Satyagraha movement which was necessitated and adopted in consequence of the Government's indifference to grant the request. But I am rather inclined to think that the means adopted have dwindled the end aimed at into insignificance. The Satyagraha method of opposing the Government has more engaged the attention of the public than the right of passage over the road in question. I firmly believe it is a pernicious evil and cannot be encouraged at all. The establishment of the right of passage over the roads is a problem that can afford to wait. It is the Vaikam Satyagraha that has created the situation and has brought about a crisis which has to be immediately solved and not really the demand for the right of passage over those roads round the Vaikam temple. Mr. Kumaran has taken pains to quote many figures. I think it is only a microscopic minority of the large number of the depressed classes that have really felt the need and made any demand for the same. There has been a long-standing local custom, and with all the Congress and Satyagraha work, still only a very very small percentage of the

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depressed classes do really demand the removal of that custom. If a population of 17 lakhs of people had felt the need and really demanded the right, and if a handful of conservative high-caste Hindus alone were really opposing the movement, I wonder how any struggle has arisen at all, how it has withstood so long, how it can withstand hereafter. So the demand is not so pressing and urgent; at least it can afford to wait. If the resolution is now carried, I am sure it is the Vaikam Satyagraha, it is the Satyagraha method of defeating the Government and extracting a right that really wins; for, to the mass of the population, the thing, apart from the paraphernalia that circumscribe it, does not appeal at all. It is a most undesirable example that could be established; and as one who has the highest respect and confidence in the virtue of our Government and the throne, I shall not vote for such a measure that would throw our Government into contempt.

MR. A. HOOGEWERF (*Nominated*): May I ask the member whether it was on the agitation of the depressed classes or any other class, that the Royal Proclamation that we have been referring to in this Council was issued?

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): Certainly not. That is why I say Government are tempted as far as possible to give amelioration to the depressed classes.

MR. A. HOOGEWERF (*Nominated*): Is Satyagraha wrong in having awakened the untouchable classes to realise their claims and rights?

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): There is my impression about Satyagraha.

MR. A. HOOGEWERF (*Nominated*): Do not our schools and colleges every day awaken the depressed classes to their rights of citizenship?

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): Certainly. At the time when they are fully awakened, the roads should be thrown open to them. That time has not yet come, and the people are not yet so much enlightened that they really demand it.

MR N. KUMARAN (*Nominated*): When will the time come according to Mr. Raja Raja Varma?

MR. L. R. RAJA RAJA VARA KOILTAMPURAN (*Edavakai*): It will be a useless prophecy that I make here now.

MR. N. KUMARAN (*Nominated*): I would like to see the attempt made by my friend.

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): He does not know my attempt in this direction because he is not my neighbour. I am doing something in my own village. He is not able to know it.

PRESIDENT: No, no, that is not his point. He wants you to prophesy.

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MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): Prophesy ? I cannot do that.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): Sir, the recent events at Vaikam and the developments thereof attracted not only the serious attention of the people of Travancore but the people of other countries as well; naturally my attention also was drawn to Vaikam which is so dear to me. I visited the place of my early English education and went around the road on which I had passed many a time as a student. What I saw there was a really painful sight to me and it must have been so to all who really love Travancore—a few volunteers standing in the middle of the public road trying to make use of the same and a few policemen preventing them from doing so, under the orders of Government evidently. This sort of continuous non-violent struggle between a set of volunteers and policemen is, I believe, what is called Vaikam Satyagraha. I fail to appreciate the wisdom of the policy adopted by Government in keeping up this struggle for ever. I had sent in certain interpellations to Government through this Council to ascertain certain facts connected with this movement, but as there were certain resolutions tabled regarding the subject, including the one under consideration, Government did not give us the necessary reply because of this resolution. The Jatha of the caste Hindus approached Her Gracious Highness the Maha Rani Regent for a solution of the question. Her Highness told the deputation that the matter would be considered after knowing the result of the resolution. Sir, the whole civilized world is anxiously looking forward to the proceedings of this House to know the result of our deliberation on the resolution. Even our beloved Sovereign is anxiously waiting to know the considered views of this House. Hence our responsibility in connection with the discussion of this measure is all the more great. We owe a great debt of gratitude to our beloved Sovereign for allowing us to participate in the administrative measures by means of recommendations in the form of resolutions.

I am glad that the matter has come up for the decision of the Council. The results of our discussion may dispose of this knotty question in one way or other; nobody would say that this Council had not sufficient maturity or experience to tackle such an important question as this. So let us approach the subject with a sense of responsibility and a feeling of self-confidence.

In doing so, we have to leave out a good deal of irrelevant and foreign matter which has crept into the discussion. I carefully listened to the various speeches especially that of our Law Member, Mr. Subba Aiyar. Even in his speech, he had to introduce several irrelevant matters to make out a strong case for him.

One important irrevelant point which we should eschew is the question of temple entry. The resolution before us has nothing to do with the temple entry question. If this resolution had anything of that kind, it would not have been tabled for discussion here. Then the question of 'real objects' has been suggested in the course of the discussion. If the Ezhavas can travel on the Vaikam roads up to the

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point of the notice-boards with the real object of temple entry, why they should be stopped at that particular place I cannot understand. Let us look at the other side of the 'real object.' If the real object of the authorities was to prevent Ezhavas from temple entry, one would expect the posting of the Police at the temple gate. If the real object of the Ezhavas and other non-caste Hindus is to enter the temple, I, as a Christian, would not be a party to that, nor am I prepared to vote for the resolution. Some years ago the non-Hindus and non-caste Hindus started a movement called the Civic Rights Movement. I took a leading part in that movement. Some of my Ezhava friends wanted to include the temple entry question also in the programme. Some of us stoutly refused to include it because it was a religious question which should be settled between non-caste Hindus and caste Hindus. Christians and Mahomedans have no place there. Similarly, I would have washed my hands in regard to this resolution also if it had any religious aspect. As the wording of the resolution goes, it is purely one of civic right question, and as such this Council is the proper place to discuss it.

Mr. Subba Aiyar again referred to certain rulings and he also appealed to *mamul* and custom and that sort of thing. My friend Mr. Changanachery Paramesvaran Pillai has met that aspect of the question and explained the inapplicability of the rulings. For argument's sake, let us suppose that those rulings are applicable to the present question. Even then my submission is that we should look upon the question from a higher standpoint. I feel strongly that we are not arguing any case before a court of law. We are only dealing with a question of policy to be adopted by Government in a matter of importance. In this view, we need not be terrified by V., T. L. R., and X., T. L. R. rulings. The judicial functions and the administrative and the executive functions are quite different. The judicial function is to carry out the laws laid down by the Legislative Council.

MR. A. HOOGEWERF (*Nominated*): Hear, hear.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): And if there is no specific law, the judges should follow the custom. The functions of the executive administration and of the legislature are quite different. That is to say whenever people begin to think that they have outlived the customs or conventions of old time, it is for the legislature and the executive administration to interfere. If the matter is again referred to the judicial courts, the judges will follow the old custom or what has been directed to be done by the judicial authority.

We have got several instances of this in the rulings of our High Court. In connection with the Succession Act of Syrian Christians and others, who have no specific enactments to guide their inheritance, the Judges very often complained that they were helpless in many cases and that the parties must appeal to the legislature to pass a law of succession. So my submission is that these rulings and the Civil Court

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pronouncements are beside the point. We are concerned with a definite policy to be adopted in connection with a large number of people who have got certain grievances to be redressed. We, the members of this Council, should approach the subject in this spirit. I had some initial difficulties in supporting the motion. Hence I had interpellated about certain matters. When some of my friends spoke, I expected my friends would give me a satisfactory reply, but from the way in which they dealt with that portion of the case, I am afraid I have to conclude that they have no case of the nature that I anticipated. My point was whether the road in question was sufficiently away from pollution distance and whether the deities in the temple would be polluted by the approach of the Ezhavas. It is admitted by the learned law member that the road is sufficiently away from the pollution distance. This pollution difficulty does not appeal to me. It was pointed out that some of the *santis* or the people who go to worship, during their journey to the temple, may get polluted. But that is a contingency which cannot be avoided. That argument might be applied to other roads as well. Suppose a Brahmin after taking his ablutions in the morning passes through a road and gets polluted. Then too the same difficulty might arise. That we should deny the civic rights of a large number of people for such contingencies is unreasonable.

Now, another aspect of the question which has been brought before the House is with regard to the time, that is, whether the time has come for making this reform. The learned law member referred to several concessions made in favour of the depressed classes during these few years. We are glad of them. And we are very thankful and we appreciate the good intentions of the Government. But that is no reason why something more should not be given. Perhaps this argument adds to the necessity of giving these civic rights also to the Ezhavas and other non-caste Hindus.

Then, again, it has been said during the discussion that the wishes and the sentiments of the minority should be respected. But it is after all a sentiment, and I think the non-caste Hindus also have their own sentiment which also requires our careful consideration. It is only a question of sentiment against sentiment. Where there is this diversity of sentiment, I think reason should prevail. There is also the other aspect of the case. There are at this particular juncture many caste Hindus, from the highest classes to the lowest who are all in favour of this movement. So I think we have got a golden opportunity to effect this reform. As such I should think it will be a mistake on our part if we fail to make use of this golden opportunity. Under these circumstances, I think I cannot but support the motion brought forward by my friend Mr. Kumaran.

MR. P. T. THOMAS (*Kottayam*): Sir, as far as I could understand there is no dispute about the use of the public roads by all classes without any distinction of caste or creed. The question is whether the roads round the Vaikam temple, and roads similarly situated

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elsewhere, are public roads. Mr. Subba Aiyar has stated several grounds to show that the roads round the Vaikam temple are not public roads and Mr. K. Parameswaran Pillai has also given good grounds to show that they are public roads.

MR. A. HOOGEWERF (*Nominated*): May I ask whether during the last ten years the Government have declared these roads to be not public roads?

MR. P. T. THOMAS (*Kottayam*): The question has already been answered.

Anyhow it has become a question of fact. The adjudication on a question of fact is one that ought to be made by a judicial tribunal and not by the Legislative Council. Further, in this case, there is an order of the Magistrate prohibiting the use of the road by certain classes. The aggrieved party wants to disobey the order. Whether the order is right or wrong, it is the duty of every law-abiding citizen to obey it or to get it cancelled by any lawful means. No sympathy is due from the Legislative Council to persons who disobey the law. The defiance of lawful authority should not be supported. The party who wants the long-standing custom to be set at nought must do it by lawful means that is, by going to a court of law and establishing its rights against this custom and order. This House could have set the matter right had it not been for the question of fact that has arisen in the case. I am sorry I have to oppose the motion as it now stands, though I am for all public roads being thrown open to all classes alike.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, in considering the resolution before the House, we shall do well to keep aside a number of allied considerations more or less intimately connected with the resolution before us, and tending to influence, or to prejudice, the decision upon the question at issue. Such, for example, is the stalemate brought about by the policemen and the *Satyagrahis* at Vaikam, where both have ferociously been maintaining the *status quo* and continue to glare at each other like China dogs! I mean no offence to anybody. The spectacle certainly is a strange one. For, on an analysis, it may be seen that members of communities who are considered too profane to use the roads in question, and their comrades, have secured the support of such a great body as the Indian National Congress. This is a spectacle which I am tempted to picture as something not widely differing from the phenomenon of a flea using an elephant as a battering ram. (*Laughter.*) No doubt I am prepared to concede that the Congress authorities and their lieutenants are actuated by the best of motives; for that matter Kaiser Wilhelm may also claim to have been actuated by the best of motives when he thought of invading France and advised the French to yield to him, holding that the French nation was committing an insensate folly in opposing his advance. So then it is not the nature of the good motives that may accompany a measure of this

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kind that has to be taken into consideration. We have to look at it from our own standard. When so looked at, my own humble opinion is that, however disguised by the concomitants of good motives and altruistic principles, there is clearly visible a feature of foreign invasion involved in this. I as a Travancorean am prepared to resist foreign invasions of all kinds. But let us not be prejudiced by this sympathetic impetus of the Congress movement. Secondly we have had the spectacle of the Savarna Jatha—जाता or जता as some people would have it—I am uncertain which is the correct pronunciation—which must certainly appeal not merely as a dazzling experiment in pedestrianism, but as a demonstration of the spirit that infuses at least a section of the caste Hindus and is likely to pervade other sections of the caste Hindus who remain in a position of neutrality at present. Viewing that movement, there is certainly reason to think that this question deserves encouragement at the hands of the caste Hindus. But I am not going to be influenced by that demonstration either. The resolution that is now before the House simply makes mention of the Vaikam roads and the roads similarly situated near other temples and urges it upon the attention of this Council that they be thrown open to all communities in the State. Mr. Subba Aiyar with characteristic powers of observation burrowed beneath the resolution and detected certain phases of tactics and strategy evidently not without foundation. Mr. Kumaran disclaims any such intention on his part. Mr. Subba Aiyar seems to see a Guy Fawkes lurking beneath the resolution ready to explode the orthodox Hinduism in the State. Naturally he directed his attack more against the invisible than against the visible. Anyhow, Mr. Subba Aiyar's contention is not absolutely unfounded. But so long as there is a disclaimer by Mr. Kumaran there, my own opinion is that we are not justified in imputing anything to Mr. Kumaran whatever other people may say or take advantage of.

So then, we have got a very short question before us whether these roads, prominently the Vaikam roads, should be thrown open to all classes alike. The question may be considered from different standpoints; first with respect to the position of the non-caste Hindus who think that they are labouring under very serious disabilities. It has been observed by various members of this House and also by Mr. Subba Aiyar that, so far as the Government are concerned, they do not spare any effort in the matter of removing the disabilities of all sections of the Travancore population. And history is very clear in that direction. From the old days when Maha Rani Parvati Bai was on the *musnad* of Travancore, we see that Proclamation after Proclamation had to be issued even in regard to the disabilities of wearing ornaments by the low caste Hindus, in regard to the poll tax that used to be levied from some sections and other kindred difficulties. So that we are now in a position to say that very much has been done by the Government towards the elevation of the depressed classes. Probably it is this impetus that the Government themselves have afforded to the depressed classes that has led to the moving of the resolution

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in the present instance. I, Sir, as a member of the Hindu community myself, and being proud of the Hindu religion, must admit that any disabilities, simply owing to accident of birth, should attach to any member of the Hindu community, is a matter which has to be very seriously considered. Further, when we say that a section of the Hindu community should be stamped as profane and polluted, I am bound to admit that whoever it be that may be responsible for that situation, the whole Hindu community must hang down their head in shame. (*Mr. A. Hoogewerf*: *Hear, hear.*) Probably it may be said that this heritage of shame is none of our own making. It has been somehow or other brought into existence. But the question is whether we should not, in our turn, try our level best to see that it is removed and the noble principles of Hinduism extended to these unfortunate brethren. In the present instance, that aspect of the question is accentuated by the very differential treatment that is accorded to these unfortunate Hindus when we consider that other religionists are receiving a far better treatment at the hands of the upper strata of Hindu society in this respect. These are all points which I need not expatiate upon because the voice of this Council is unanimous and Mr. Subba Aiyar himself has admitted the force of it. Occasionally I hear it said that, owing to eating in a particular way, owing to hygienic conditions, sanitary notions, customs and habits, the high class Hindu finds it rather difficult to fraternise with the low class Hindu. But if this system of sharp distinction between high-class and low-class is to be maintained, as Mr. Kumaran pertinently raised the question, when are we going to see the end of it? So long as we are not prepared to allow the necessary facilities to them, is it any wonder that they will remain in the old conditions in which they are purposely left? I recollect a small piece of verse in Kingsley's *Yeast* where a tenant was despised by a Squire in respect of his peculiar habits and ways and the peculiar obloquy that attached to his family. To this the tenant replied:

"Our daughters, with their base-born babies, have walked away in shame,
Squire! If your daughters slept where ours did, they'd have done the same."

So if you are going to perpetuate the distinction that subsists between the high-class and low-class Hindus, the conditions would continue to be the same. No amount of nagging that their habits are not cleanly and that they are insanitary will do. Such charges may be continued *ad infinitum* by persons who want to criticise and who never want to mend. So viewing the question from that stand, there is absolutely no conflict of opinion in this House in regard to the need that every endeavour should be made to encourage the aspirations entertained by the so-called profane section of the Hindu community.

Then it is said the matter is entwined with religious considerations, and religious observances, due to the proximity of a number of temples to the roads in question. Mr. Padmanabha Pillai on this side of the House pointed out that, so far as the Government are concerned, we are not in

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a position to presume that any religious question is involved in the present discussion because of the readiness with which the Government have tabled the resolution, in the light of the Legislative Council Regulation and the Rules framed thereunder. That certainly is a correct answer so far as I can see. But looking back I see Government have been pleading a number of mistakes in connection with this question *e. g.*, with respect to the existence of P. W. D. marks, with respect to the Maramath Department doing certain things and not doing them occasionally. Mr. Subba Aiyar may also plead that the President by a mistake admitted this resolution. Therefore I do not wish to emphasize that aspect of the question.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): May I tell my friend that a matter covered by Section 12 is not one over which the President can have a veto?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Mistake or no mistake I am prepared to continue the discussion. I am coming to what has been said with respect to the religious aspect in view of which Mr. Subba Aiyar would contend that this Council would do well to refrain from forcing its views on the caste Hindus who want that their religious observances should not be imperilled.

If the question is proved to be a religious question, I am perfectly at one with Mr. Subba Aiyar in thinking that this resolution has been wrongly admitted even for discussion in this House.

PRESIDENT: That is not what he said.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): As was pointed out by Mr. Padmanabha Pillai, if Mr. Subba Aiyar can substantiate clearly that there is a religious obstacle in the way of this resolution being carried, I will happily support him in spite of other considerations that have been alluded to already.

My friend Mr. Paramesvaran Pillai said, during the course of the very warm address that he delivered yesterday, that, except a few perverse individuals, the whole of Travancore was in favour of this resolution. I am sorry I cannot accept the statement of Mr. Paramesvaran Pillai in that respect. In answering the aspect of the religious obstacle pointed out by Mr. Subba Aiyar, the test he furnished to demonstrate that no question of religion is involved in the present instance, is this. Except the common practices of all Hindus, all exceptional practices or special observances may be regarded as quite unessential and as mere social excresences according to him; and he instanced it by a feline example obtaining in Kashmir. Sir, if it is the existence of commonness of practice that is to be regarded as the essential of a religious observance, I fear all the wide world over it may be said that no religion exists, (*Hear, hear.*) For among the Hindus themselves we have got the followers of Sri Sankaracharya, of Sri Ramanujacharya, of Madhvacharya and a number of other schools. Coming to modern schools, there are the Ramakrishna Mission, the theosophical society and other movements. No doubt they start from what is known as the inviolability of the Prastana Trayam. By a series of commentaries, as many schools and

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[President.]

communities have come into existence as there were commentators among the Hindus. There is nothing like common observance or even common principle in practice. The same is the case with Christian brethren. They have got among them the Catholics, the Jacobites, the Protestants and all manner of sects. The Mahomedans fare no better. The Sunnis and the Shiyas and others exist among them. Therefore, if the existence of a common practice is an essential manifestation to make out the existence of a religious principle, all the world over, I am prepared to submit, nothing like religion exists. So, the contention of Mr. Paramesvaran Pillai that there is nothing like religion involved in the present case because no practice common to all Hindus is in danger, is untenable. The other observation by him, that it is only the perverse men that object to this resolution, I am sorry I have to oppose as unfounded. Unfortunately, among the caste-Hindus there are a number of people who honestly and sincerely believe that the approach of the so-called profane section of the Hindus to the road in question cannct but pollute the temple and cause considerable violence to their religious sentiments. Such persons, as a matter of fact, do exist. It is unfortunate that they exist; I am prepared to say that (*Laughter*). I say, let us not blink the existence of these people. The question, therefore, arises, how far, even if we are prepared to take up the responsibility upon ourselves, we are justified in inflicting the pain on sincere and honest people of that description. They are themselves not responsible for the position. It has been inherited by them from hoary antiquity. They have been observing these things from time immemorial and they have been confirmed in the belief that such practices of theirs, if not preserved, cannot but affect their religious tenets. So then, that is an aspect of the question that deserves consideration. We say that we should show all sympathy for the depressed classes. As I stated a little while ago, absolutely nothing should be spared in the matter of advancing the cause of the depressed classes. But it should be done in such a way as not to cause any unmerited pain to the innocent and unoffending section of the same community. If, by your forcing any reform with a view to unite two sections of the same community, you are setting about, unfortunately, to drive a wedge in another part of the same community thereby splitting it into two, I ask, what is the use in your carrying out the reform? Therefore, my own idea is, if, as a matter of fact, a religious principle is involved in the question which, if enforced without regard for the feelings of others and for their religious practices, would go against them, I would certainly have much to say against the spirit of this resolution.

MR. J. JOHN NIDIRY (*Changanachery cum Minachil*): What about the condition of the Ezhavas who are educationally and otherwise much advanced in these days?

PRESIDENT: What is your question? You have to address the question to me.

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MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): What place does Mr. Narayana Pillai give to the sentiments of the Ezhavas; who are nowadays far advanced in education and in all other matters?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I answer the question, Sir?

PRESIDENT: Yes, if you wish to answer it.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, the sentiments of the depressed classes have certainly to be taken into consideration. But if my friend Mr. Nidiry thinks that this is a question of a fight of sentiment against sentiment, he ought to have known that the question has to be decided upon the basis of right. Here, if, as a matter of fact, the members of the depressed classes have not been taking advantage of the existence of the roads in question and if they have not been allowed to pass and re-pass along the road in question, that I would take as an indication of the fact that they have no right to the use of this particular road. Therefore, so far as the question of right is concerned, if the right is against them, the Ezhavas have to rest content with their present position as established in the past. The other man is in possession of a right. In the case of the Ezhavas, it is only an infringement of their sentiment at present. In a case of sentiment *versus* sentiment, the question has to be solved on an ascertainment of rights.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): And of reason also?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Right is reason. In the existing state of affairs, if rightful, I would certainly decide against the man who wants a change to be introduced.

So then if it is a question of religion, this is the view to be adopted. But I doubt very much whether any idea of religion enters into the question at all. I was listening to Mr. Subba Aiyar. He adverted to the aspect of religion, but did not say that if Ezhavas or other people who want the advantage of the road in question are allowed to pass and re-pass along the road now tabooed, the *poojas* would be affected or the temple polluted or the sacredness of the worship inside the Vaikam temple spoiled. He never argued like that. On the other hand, he argued this was the thin end of the wedge that if the Ezhava was allowed to go near the *prakaram* of the temple, he may, in an unguarded moment, trespass into the temple.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I referred to the temple entry for one purpose. I did also say that religious sentiments were affected. I pointedly referred on the one hand to their sentiments and said on the other that those sentiments were religious in character.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That is not my point. What I was pointing out was that nothing like profanation of the temple has been pointed out by Mr. Subba Aiyar in elaborating his arguments. Religious sentiment is one thing, and performances of

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[Mr. C. Sankara Menon.]

religion in the most orthodox fashion are another thing. If there is anything in the tenets of Hinduism to the effect that the object of the caste Hindus in worshipping inside the temple would in any way be frustrated by the Ezhavas coming near the temple wall, then, I would be in a position to oppose the spirit of the resolution. Mr. Subba Aiyar never said anything in that direction. That is the aspect that I am pointing to. I do not know whether Government consulted religious authorities like Tantris, or Vaidiks in the matter.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Oh, yes.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Allright: even if consulted, nothing was referred to during the argument. The religious authorities, who superintend the religious rites in the Vaikam temple, never contemplated the idea that anybody should be excluded except from within the four walls of the temple. So far as the roads in question are concerned, it must have been the intention of the founders of these religious institutions that anybody should be at liberty to take advantage of them. If the authority of any Tantri or Vaidik is quoted, one could have understood the objection. There is only the question of practice here, and I am tempted to call that in question. On the merits of that practice I myself am prepared to join issue. I say that those who brought these institutions into existence might not have thought of anything about the possibility of any pollution or profanation to be cast upon the installation in the temple by the approach of such people as the Ezhavas and others as is evident from the very walls put round the temple to exclude unwelcome intruders. That being the case, I eliminate the religious aspect of the present discussion.

MR. C. SANKARA MENON (*Quilon*): May I ask Mr. Narayana Pillai whether the temple tank would not be polluted if the non-caste-Hindus approach near the tank when the caste-Hindus are bathing in the tank?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I fail to see the exact measurement of the distance of pollution. I am sorry I have not got any definite information about the same. That distance may also be varying according to the tenets proposed by each Vaidik. That is a different question.

PRESIDENT: That is not Mr. Menon's point. He asks whether, outside the walls of the temple, the approach of the so-called untouchables would not be considered pollution by the caste-Hindus while they are bathing in the tank. The tank is by the side of the road.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I thought, Sir, that water was the most purifying thing. I am not able to understand how water can pollute anybody. As a matter of fact, pollution is removed by water.

MR. C. SANKARA MENON (*Quilon*): There is not only the pollution of the person who is bathing, but of the tank also.

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I have not heard of a tank suffering from pollution except by dirt. (*Laughter.*) I cannot answer my friend. The tank is used for the purpose of removing pollution. That is what I think.

MR. C. SANKARA MENON (*Quilon*): Will the idol be polluted by the non-caste Hindus approaching the temple?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That seems to be the Malabar doctrine, so far as the Hindus are concerned. The idol is a juristic person; not so a tank.

Then, the other aspect of the question that has been pressed with considerable force by Mr. Subba Aiyar is the legal question. I fear, that is the main question that has to be considered so far as the arguments started from the official benches are concerned. Sir, there is no denying the fact that the road exists. The only question, therefore, is whether it is a public road or a private road.

PRESIDENT: Not one road; there is more than one road. The resolution refers to roads round the Vaikam temple and other roads similarly situated.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I referred to it as the road only for the purposes of illustration. I know it is a continuous road all round the temple.

As I submitted, Sir, the question is whether the road is a public road or a private road. As to when the road came into existence we have not got any definite history. The institution itself, I am prepared to assure, is a very old institution and it existed much earlier than the time when it came into contact with the Travancore Sovereigns. The first contact of the Travancore Sovereigns with this particular institution was in the sixth century M. E. when King Aditya Varma was first made the Samudayastani of the Vaikam temple, to protect the interests of the temple and to safeguard it. Before that, it was an *Oorammai* institution under the management of various persons. From the sixth century, the institution has been under the supervision of the Travancore Sovereigns and during the time of Colonel Munro a closer contact between the State and the religious institutions was established by the Resident-Dewan. With respect to the step taken by Col. Munro, my friend Mr. Nidiry, Mr. R. Krishna Pillai, myself and a few other gentlemen had to sit as a committee and consider what exactly was the relation that was established during the time of Colonel Munro between the State and these institutions. My friends took the view that these institutions were confiscated or were made the property of Government of Travancore and that no other person had anything to do with them. I maintained a different opinion and as a result of our difference a Royal Proclamation was enacted on the subject, which I shall be just now referring to. I traced the small history only for this purpose. The road in question was originally a road not made by the Government of Travancore, but by the people, namely the villagers of Vaikam, for their own use. First of all, the question arises, what was the purpose for which the roads were brought into existence. As I said already, before

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[Mr. P. K. Narayana Pillai.]

it came under the management and control of Government, it was an *Ooranmai* temple and therefore the trustees of the temple were acting on behalf of villagers. Why should any of the villagers, therefore, be excluded from the enjoyment of the road brought into existence for the benefit of all the villagers? That is what I fail to understand. Certainly it is not the case of the Government, as I understand it, that they have themselves modified in any way the use of the road in question. They are continuing what was found at the time they got the control over these institutions. It was, as I submitted, an *Ooranmai* institution now under the management and control of the Government of Travancore. The properties of the institution were regarded as the property of the Vaikam temple and not as the property of the Sovereign who occupied only the position of a trustee and could not exclude anybody who was not already excluded. But the Royal Proclamation enacted on the subject is very pertinent to the subject. Keeping aside the Proclamation, the road has been brought into existence not by Government but by other agencies. The lands belonging to the Vaikam Devaswom were viewed as Devaswom property; at any rate, before the separation of the Devaswoms it belonged to the Devaswom and the road in question exists in that property. My friend Mr. Subba Aiyar referred to 5 T. L. R. and contended that the distinction between the king's highway and village thoroughfare or *Gramaveethi* will have to be observed, because that ruling has never been departed from and it has been followed in several subsequent decisions. My submission is, that the applicability of 5 T. L. R. 93 has practically disappeared after the enactment of the Land Conservancy Regulation in 1067. That Regulation enacted for the first time that all public roads, pathways, rivers and all manner of things included in the expression *poramboke* are *porambokes* and are the absolute property of Government. It does not matter where the pathway is situated, provided it is a pathway and falls under the definition of *poramboke*. This is not my own interpretation. I am borrowing the interpretation placed upon that section by the High Court in 33 T. L. R. 34, a decision by Chief Justice Raman Menon. He says that even a private land may become Government property under the operation of the Land Conservancy Regulation; so much so, under the Regulation, if a portion of a property registered in the name of a private individual be eroded by an adjoining river, the portion so eroded becomes absolute Government property and they get power to register it in the name of another. Now, Government may say that since it is their absolute property they are not prepared to throw open the roads to the Ezhavas. I submit that, as it is, they are not entitled to say so. Because, the Land Conservancy Regulation has been repealed and re-enacted by Regulation IV of 1091, under which, fortunately rights of way now existing upon *porambokes* are protected. But for that I would not contend in the way in which I am contending now. So then, the question comes to be this. In the case of this particular road, as I said, it belonged originally to the Vaikam Devaswom. By a

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long course of user persumably originating in a grant, the public, which include a section of the public, have acquired a right to use the road in question. I say, under the Land Conservancy Regulation, all roads have become the absolute property of the Government and that, since the enactment of the present Regulation, the Government have recognised and saved the rights of way and easements upon such roads. Therefore the contention of Mr. Subba Aiyar that it is the absolute property of the Vaikam Devaswom overlooks the provisions of the Land Conservancy Regulation.

PRESIDENT: That contention applies only to a portion of the road.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): My position is this—

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I suppose Mr. Narayana Pillai has read the definition of "Government property" in the Land Conservancy Regulation.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I have read it; I have read the decision in 33 T. L. R. 34, and also 5 T. L. J.; I have read all these. So far as it suited Government to contend that it is their absolute property, they contended like that; but, in the present case, since it goes against them, they contend that it is not their property, and say, "We decline all manner of ownership". That seems to be the position Mr. Subba Aiyar assumes when it is somewhat inconvenient for him to admit that it is Government property. Whatever be the result of the operation of the Land Conservancy Regulation in respect of this road, there is the Royal Proclamation already referred to which is so clear that even the subtleties of Mr. Subba Aiyar cannot befog the situation. No doubt, he said that the interpretation of this Royal Proclamation is to be undertaken only after referring to the Preamble. That is never the principle of interpretation. The Preamble should never be looked into while interpreting any clear enactment. I think, Sir, Mr. Subba Aiyar says so, because, otherwise the Proclamation will prove rather troublesome to him.

Sir, I will now draw the attention of the House to Section 6 of the Proclamation which says—

"All immoveable properties belonging to Devaswoms mentioned in the Schedule and now shown in the Revenue Accounts as *Devaswomvaga* shall hereafter for all intents and purposes be deemed to be *pandaravaga* and dealt with as such".

My friend Mr. Subba Aiyar said that the language used in the Royal Proclamation applies only to the lands in the possession of tenants. But, I say, no such restriction has been made in the case of *thanathu* lands of Devaswoms and the Royal Proclamation directs that such lands as belonged to Devaswoms should be treated as *Pandaravakai* lands. Such being the Proclamation upon the subject, there is absolutely nothing to be served by a reference to Settlement Registers, Survey Numbers, or the agency which conducts the repairs of the road, that is, by saying that it is the Maramat Department and not the P. W. D. The Maramat agency is as much under the control of Government as the P. W. D. I do not

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[Mr. P. K. Narayana Pillai]

perceive any difference materially affecting the questions in hand. We may as well say that the road in question was swept by female sweepers and not by male sweepers. Would anything spring up from that detail? It is a distinction without a difference. It is open to Government to direct any agency to look to the repairs of these roads. As for the Survey Number, that is left to the caprice of the Surveying Officer, who, in his anxiety to facilitate his work, may have numbered it in the way most advantageous to him. All that cannot touch the question vitally at issue here as to whether this particular road is the property belonging to the Government or to the Devaswom. My contention is that, after the enactment of the Proclamation by His Highness The Maha Raja, divorcing the Devaswoms from the Land Revenue Department, the incorporated Devaswoms are incapable of holding any immoveable property; for even if Government acquire any particular property and make a gift of it to an incorporated Devaswom, it will, according to the Proclamation, immediately vest in the Government as their absolute property, subject, according to the later Land Conservancy Regulation, to rights of way and other easements already in existence. It is very difficult to blind ourselves to the full force of the Proclamation. Now, if, even in the light of all these facts, Mr. Subba Aiyar says, "We are not the owners of the property", I am sorry, I am not in a position to see eye to eye with my friend in that respect. So, that contention of my friend is not entitled to weight.

There is yet another aspect of the question to be put before the House. If it is not absolutely necessary for purposes of religious worship in the Vaikom temple, as I have argued already, even granting for argument's sake that the particular road does not belong to the category of King's highway as distinguished by my friend Mr. Subba Aiyar, I would contend, if it does no harm to anybody, why not Government be so good as to dedicate it for the use of these people as well. That is an aspect of the question which Mr. Subba Aiyar did not evidently tackle. Mr. Kumaran's resolution amounts to this. This Council recommends that these roads may be thrown open to all manner of people belonging to the Hindu fold. He did not refer to this road as public road or as public highway. He only says that this is a road. There is no dispute in regard to that; Mr. Subba Aiyar does not deny that (*Laughter.*) Now, if there is absolutely no harm done to anybody, why not Government, even if it be not a public highway, convert it into a public highway? There remains, no doubt, the question that has been raised by my friend Mr. L.R.Raja Raja Varma, *viz.*, whether the throwing open of a few yards of road round the Vaikam or the Haripad or the Ambalapuzha temple would in any way serve to eradicate once for all the inherent vices of the caste system or to ameliorate the social condition of the depressed classes. That is a different question. For my own part, I am prepared to concede that throwing open a few yards of road round the Vaikam temple would not go a great way towards the relief of the difficulties of the depressed classes. But, that is a different question.

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MR. L. R. RAJA RAJA VARMA KOIL TAMPURARAN (*Edavagai*): That was my contention also.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That is exactly what I was saying; I was simply quoting you; I am not opposing you. (*Laughter.*) My submission is that we are not to look upon the question in that light at all. They do not contend that throwing open a few yards of road would completely wipe off all the difficulties that they are now labouring under. Here is a prominent instance, a glaring instance where, a set of persons, simply for the accident, or, I may say, for the sin of having been born in the Hindu fold, are branded as profane, while all others in the world, even other religionists—are in a comfortable situation; (*Hear, hear*); that is the question to be considered. That is the real grievance to be considered by Government.

As to the question whether it is a public road or a private road and all other allied questions I have argued according to my light. That is all. It is certainly possible to have a different view. It is a question which certainly admits of further discussion. I say if that is the idea of Government, it is better for the Government to make a declaration as to what they themselves think about it. In fact the exact position of Government in this respect, except through the glimmer of Mr. Subba Aiyar's opinion, I am not able to gather. The Government's case is the most obscure one in this particular discussion. So far as the *Satyagrahi* is concerned, or rather the people of the stamp of my friend Mr. Kumaran are concerned, their position is very clear. They say that here is a public road and that they want to walk along that road. So far as the opposing section is concerned, their case also is equally clear. They say that here is a plot of temple land and that others are not entitled to walk along that. That is quite clear. But what exactly is the position of Government? In view of the Proclamation, in view of the Regulation and in view also of the somewhat interesting position adopted by my friend Mr. Subba Aiyar yesterday, I am unable to make out the position of Government.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): That of a trustee.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Mr. Subba Aiyar says that Government is a trustee and that the lands still belong to the Vaikam Devaswom. If that were so, I cannot understand the Proclamation, the Regulation and other kindred measures. So, what exactly is required is that Government should bestow some consideration upon this question and come to a definite conclusion as to their position in this matter. Are they trustees, or are they Sovereign lords to whom these lands belong, or are they simply persons maintaining the peace and seeing that heads are not broken near the vicinity of the Vaikam temple? Is that the only thing they are about? A definite position, before we are asked either to oppose the Government or support the Government, must be arrived at.

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[Mr. G. Parameswaran Pillai.]

That position, I am sorry, is not forthcoming. No doubt, Mr. Subba Aiyar and other gentlemen also referred to the question of the magisterial interference and a prohibitory order passed by the Magistrate asking some people to confine themselves to a particular side of the road and not to transgress. If that has been for the sake of keeping the peace, I would be the last person to contend that that should be withdrawn. So, when I am proceeding to support the resolution, it should be taken as subject to all legitimate orders of the civil courts and criminal courts as well as the pronouncements of constituted authorities against which I am the last man to hurl defiance and disregard. With these observations, I beg to submit that I am in sympathy with Mr. Kumaran's motion.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Sir, the subject has been discussed at very great length and I have not very much to add to what has already been said from this side of the House in favour of the resolution. But for the great sensation and wide publicity that the Vaikam roads have attracted, the question before the House would have been comparatively a simple one, admitting of no controversy of any magnitude. The resolution before the House aims at a recommendation being made to Government as to what this House thinks about the prohibitory steps taken by Government against certain classes of His Highness the Maha Raja's subjects. In so far as the question has been referred to this House by Government, in other words, when Government decided to admit this question for consideration before this House, I take it that Government were anxious to ascertain the wishes of the people with reference to this vexed question about which perhaps they find it very difficult to come to a definite conclusion one way or the other. The only question, then, for consideration by this House, in my opinion, is whether the roads, as they are, on the information that we have about the character of those roads, can be thrown open to all classes of His Highness the Maha Raja's subjects. It has been contended by certain gentlemen that the roads are not public roads in the sense in which the term 'public road' has been interpreted by the High Court in certain rulings. But I was watching what would be said by Mr. Subba Aiyar on behalf of Government with reference to the exact character of these roads. I was about to put the question which was put by Mr. Parameswaran Pillai yesterday and I thought that it was a very pertinent question to be asked in this connection, as to whether, according to Government, the Devaswom authorities had absolute control over these roads in question. Mr. Subba Aiyar stated that that aspect of the case had not been considered or discussed by Government. In other words, when the question whether the Devaswom authorities had absolute rights over those roads, so much so that they can even prohibit any class of His Highness the Maha Raja's subjects, who are now allowed to proceed along those roads, was put to Mr. Subba Aiyar, he said that that aspect of the case had not been considered by Government.

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MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I did not say that.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): But that was what Mr. Paramesvaran Pillai wanted to know.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): In answer to it, I have only said that it was not necessary to consider it.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Either way, our position has to be made clear. If it is a public road over which Government have got absolute right and absolute control, there can be, according to us, no justification for Government's stepping in and saying that only some classes of subjects can go there and other classes of subjects cannot go. If, on the other hand, it were contended on behalf of Government that here is the property which is at the absolute disposal of a private body, or which is practically private property or property of a private individual as the case may be—if that were the contention on behalf of Government,—over which it is not open to the public or even to Government to interfere and if the contention of the opposite side is for opening these roads for our sake as well, one can understand the Government stepping in and stating that the so-called depressed classes or rather untouchables cannot proceed over these roads. Otherwise, I cannot see how the position of the Government can be justified as Government. The question as to whether it is a public highway or not, I should think, should not be taken up for consideration by this House, because it admits of arguments on either side-and very reasonable and cogent arguments perhaps on either side-which may be taken into consideration and decided by a competent tribunal. But this House in making a recommendation to Government has at the same time to consider whether, in view of public expediency, it is desirable, in spite of the fact that the roads appear to be at any rate *prima facie* public roads, there should be any prohibition at all. It may be perhaps possible for those who contend otherwise to establish in a court of law by sufficient evidence that it does not partake of the character of a public highway. It may also be possible for those who contend the contrary to establish that it is a public highway and not one of those *gramaveethies* over which the people have got only a limited right. The case has been argued on either side before this House yesterday by Mr. Subba Aiyar on the one hand and Mr. Paramesvaran Pillai on the other with very great ability. Unfortunately, this House, I should consider, need not be influenced by the arguments put forward by either Mr. Subba Aiyar or Mr. Paramesvaran Pillai one way or the other, because, so far as we are concerned, it is sufficient for all practical purposes and not for legal purposes if *prima facie* we can consider these roads to be public roads. Let us, by all means, make a recommendation to Government. Any recommendation made by this House on this question will certainly not affect the civil rights of other parties to this case. For instance, if the Savarnas are the aggrieved party, it is open to them to get their remedy from a competent civil court. If, on the

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[Mr. Joseph Panjikaran.]

other hand, Government still persist in not giving effect to the resolution of this House, it is open so to those who are aggrieved thereby to go to the civil court and to get redress from the same competent authorities. At any rate, let us do our duty in this respect and that is, when Government ask us, when they admitted this resolution under Section 12, if, as is contended by Mr. Subba Aiyar, it is a matter in which certain religious feelings of certain classes of subjects may be affected—and I am indeed very glad that the Government have thought it fit to admit the resolution and ascertain the wishes of the people on a very important matter like this—when therefore Government have asked us what we feel on the subject, let us make our position clear, and our position is that the Vaikam roads appear to be *prima facie* public highways. So long as we find that communities other than Hindus are allowed free access to these roads, that circumstance, I should consider, should weigh with us, in coming to a *prima facie* conclusion on this matter. If, as a matter of fact, this question is in any way connected with religion, we cannot certainly believe that communities other than Hindus may be allowed to proceed along these places without at the same time any harm being done to the religious sentiments of any community. That one circumstance, above all, should be sufficient for this House to come to a *prima facie* conclusion that, after all, these roads may now be treated for all practical purposes as public roads and thus give expression to what we feel on the subject so that the Government may take the necessary steps. The Government is the final authority which will have to decide this question and give effect to the decision of the House. In doing so, they have to take into consideration several circumstances. But this is one circumstance which, I am sure, Government will be forced to take into consideration. The representatives of the people in this House feel that the demand, request or prayer contained in the resolution *viz* equality in the matter of exercising civic rights, should be given, and so far as that matter is concerned, let us come to a definite conclusion and tell Government that this is the feeling of the representatives of the people. It is for them to see that this is given effect to without violation to the civil rights of any particular community and perhaps also with a view to coment the intercommunal feeling so that hereafter at least we may not be said to have practically given away our own brethren in the matter of elementary rights of proceeding along public pathways (Mr. Hoogewerf: *Hear, hear.*)

MR. JOSEPH PANJIKARAN (*Shertallai*): Sir, I would first of all thank my friend Mr. Kumaran for the very felicitous expressions which he has used in reference to the Christian community.

PRESIDENT: I cannot hear you.

MR. JOSEPH PANJIKARAN (*Shertallai*): Sir, I would first of all thank my friend Mr. Kumaran for the very fine words in which he has referred to the attitude of the Christian community. He said that the Christians are for equality all round and not for special privileges, and that the sympathy of the Christians has been all along with the

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other communities. Yes, I think that the sympathy of the Christians is, and will continue to be, with those who are not in privileged situations. If Christians have been ever sympathising with the so-called depressed classes, the latter were ever in their turn cooperating with the Christians in the demand of their legitimate common aspirations, *viz.*, equality all round. If Ezhavas and Pulayas are, in some quarters, considered as unapproachables and untouchables, Christians are in some of those quarters considered as untouchables. I think that nobody acquainted with the customs and manners of this country will dispute the truth of this statement. If anybody feels any doubt as to the truth of what I have stated, I would only refer to a little incident that took place the other day at Vaikam. Some time after the starting of the *satyagraha* campaign at Vaikam, a Christian member of this House had gone over there to study the situation. From morning till after midday, he was discussing about the legality and propriety of the *satyagraha* movement at Vaikam with two Nayar *satyagrahi* leaders, of whom one is a member of this House. When the time for the noon-day meal arrived, the Nayar friends stepped into the house and the Christian was served with the same meal outside, of course, in a *pandal*. This clearly shows that the two Nayar brethren, in spite of their enthusiasm for the Ezhava and the Pulaya, could not brook the sight or vicinity of even a Christian while taking food.

MR. T. LAKSHMANA PILLAI (*Nominated*): May it not be owing to dietetic considerations and not due to change of religion?

MR. JOSEPH PANJIKARAN (*Shertallai*): That is raising the question of neatness.

PRESIDENT: He refers to dietetic considerations.

MR. JOSEPH PANJIKARAN (*Shertallai*): I think it was the same kind of food that was served both inside and outside the house.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): May I know whether the caste-Hindus in question were conservatives or men of advanced views?

MR. JOSEPH PANJIKARAN (*Shertallai*): I do not know that. From the discussion, I understood that they were on the side of the *satyagraha* movement at Vaikam. I have referred to the above instance only to show that the caste custom of pollution attaches itself, in the eyes of the orthodox Hindu, not only to the Ezhava and the Pulaya but to the Christians as well. Under these circumstances, I, as a Christian, am even interested in sympathising with the aspirations of that section of the public who are not allowed to walk along certain roads in the State. Personally speaking, I have every reason to sympathise with the aspirations of the Ezhavas and no reason whatever to be otherwise. To begin with, I represent a constituency where the Ezhavas form at least half the total population of the taluk. I have many friends among them. I have to move among them and deal with them every day. Nor is this all. While I was studying in the Alleppey Sirkar High School, from the III form to the V form, I was living in an Ezhava house taking my meals there. The Ezhava in whose house

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[Mr. Joseph Panjikaran.]

I was living was none else than Mr. C. Kutti, teacher of happy memory, the first Ezhava Matriculate, and perhaps the only Ezhava in public service at that time. I have been saying all these things with the set purpose of showing that, if I oppose the resolution—and I do oppose it—it is not because I am in any way unsympathetic towards the aspirations of the Ezhavas to walk through all the roads that I can walk through, but because of the highly objectionable methods that are being resorted to for opening the Vaikam roads.

MR. N. KUMARAN (*Nominated*) : May I know from Mr. Panjikaran whether he approves the bringing up of this resolution before this House ?

MR. JOSEPH PANJIKARAN (*Shertallai*) : While I approve the bringing up of this resolution before this House, I may point out that it is not happily worded. The resolution before the House is that the roads round the Vaikam temple and all other roads similarly situated in Travancore be thrown open to all classes of His Highness the Maha Raja's subjects without distinction of caste or creed. The resolution relates to particular roads. If the resolution was more generally worded, it would have been better. If the resolution had been to the effect that all public roads in the State should be thrown open to all classes of subjects irrespective of caste or creed, I think the Government themselves would not have cared to oppose.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : Hear, hear.

MR. N. KUMARAN (*Nominated*) : Would that resolution, if so worded, exclude the Vaikam roads ?

MR. JOSEPH PANJIKARAN (*Shertallai*) : That raises the question whether the Vaikam roads will or will not come within the definition of public road. One party contends that the Vaikam roads are public roads; the other party contends that they are private roads. Hence the question is one of fact about which there is serious dispute. My point is that a resolution should be so worded as to avoid calling upon the Legislative Council to decide upon a disputed question of fact or ownership.

MR. N. KUMARAN (*Nominated*) : May I bring to the notice of my friend the existence of a Proclamation throwing open all public roads in Travancore to all classes ?

MR. JOSEPH PANJIKARAN (*Shertallai*) : Yes, I know there is such a Proclamation. Is it for the purpose of giving additional strength to the Proclamation that my friend wants this House to accept this resolution ? Since it is my friend's contention that the Vaikam roads come within the Proclamation, I do not see any reason why my friend should not advise any person who is not allowed to pass through these roads to file a suit for a declaration of his right.

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MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): May I know whether he knows that there are two kinds of public roads according to the rulings of the High Court?

MR. JOSEPH PANJIKARAN (*Shertallai*): Yes, I know.

MR. A. HOOGEWERF (*Nominated*): Then what is the necessity for any resolution of that kind?

PRESIDENT: That is what Mr. Panjikaran himself is asking.

MR. JOSEPH PANJIKARAN (*Shertallai*): The question that was largely mooted in this House is whether the Vaikam roads are public roads which all people can use as a matter of right or whether they are private roads belonging to the temple. Arguments have been advanced on both sides and nice questions of law have been discussed as in a court of law sitting to decide between contending parties on disputed questions of law and fact. My point is that, if the resolution had been worded in general terms without mentioning particular roads, much of the discussion that we have had could have been avoided and the Legislative Council would not be usurping the functions of a court of law. Under these circumstances, I do not find my way to lend my support to the resolution before the House.

But the reason why I oppose this resolution is the fact that the *satyagraha* warfare is going on at Vaikam even now for the purpose of opening the Vaikam roads. A procession of the so-called *tindal* classes through the Vaikam temple roads, which the above classes have not been allowed to use from time immemorial, was arranged and the date of the procession was announced. This news aroused the religious susceptibilities of the orthodox Hindu, with whom the theory of pollution is an article of faith. A breach of the peace was apprehended if the proposed procession were to take place. To prevent such a breach of peace, the District Magistrate issued a prohibitory order prohibiting a section of the public from entering the Vaikam temple roads. The answer to this order is the *satyagraha* movement at Vaikam. The passing of this resolution in this Council will be the success of the *satyagraha* at Vaikam. If that is not one of the objects of the resolution, I would ask my friend Mr. Kumaran why his resolution refers to the Vaikam temple roads in particular. I believe that he would not have referred to the Vaikam temple roads particularly but for the fact that the Indian National Congress is conducting the Vaikam *satyagraha*. The resolution refers to other roads as well. But what I ask is if my friend Mr. Kumaran had not in view the success of the *satyagraha* campaign also, what was it that induced him to refer to the particular roads whose opening or not at this juncture is inseparably connected with the success or defeat of *satyagraha*.

MR. N. KUMARAN (*Nominated*): We were referring to the Vaikam road for the last twelve years or so in the Popular Assembly.

MR. JOSEPH PANJIKARAN (*Shertallai*): I know that in the Assembly the Vaikam roads as well as the other roads were referred to. That is just the reason why I have asked the question why, in this resolution, the Vaikam roads are specially referred to. Evidently because of the *satyagraha* at Vaikam.

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[Mr. Joseph Panjikaran.]

MR. N. KUMARAN (*Nominated*) : I assure my friend that it is not so.

MR. JOSEPH PANJIKARAN (*Shertallai*) : About that assurance I have only a word to say. In this House we have been hearing so much about deciding this question independently of other things. So my friend's assurance I would take only to mean that the resolution can be discussed and voted upon independently of the *satyagraha*. I would perfectly agree with that view if I were a judge sitting in a court of law to adjudicate on the question of opening these roads. Then the right to have the roads opened should alone be considered and a decision arrived at independently of the *satyagraha*. That is not the position here. As a member of the Council and as such responsible before everything else for the general welfare of the State, I feel it my duty to take into consideration the circumstances under which this resolution is brought before the Council, the circumstances existing at the time when the resolution is voted upon, the objects aimed at, and the results, intended or not, that would flow from the passing of the resolution. It is a pity that, although my friend Mr. Kumaran was a member of this House for the last two years, it was only after the starting of the *Satyagraha* (Rao Bahadur Krishna Aiyangar : *Hear, hear*) that he thought of bringing this resolution in this House so that the success of the one will be the success of the other.

MR. A. HOOGEWERF (*Nominated*) : May I know whether the claim or the right in any way is altered by the congress or *satyagraha* taking an interest in this question ?

MR. JOSEPH PANJIKARAN ((*Shertallai*) : I do not for a moment think that the intrinsic worth of the claim or right will in any way be altered. But what I say is that as responsible members of the Council we have to look not only into the intrinsic worth of the resolution but to other circumstances also. Suppose the Vaikam roads are now opened. What would be the effect of it on the minds of the general public? I am sure that the general public will consider the opening of the roads now as the success to *satyagraha*. The nice distinction between the intrinsic worth of the resolution and the immediate results of passing the same will not be realised by the generality of the public. They will ascribe the success to the *satyagraha* method of agitation. This will have a very bad moral effect; and I am afraid that, as a result, the *satyagraha* method of agitation will be started in this country for the redress of every little grievance. There are a thousand and one things about which one section of the public or other is aggrieved and I am sure that human ingenuity will be able to invent one form of *satyagraha* or other for getting redress. As an instance, I draw the attention of the House to the law of this State regarding the putting up of churches. No church can be put up without the previous sanction of the Government. This is a matter on which I may tell the House that the Christian community feels very keenly. I know of many instances of petitions for such sanctions

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having been refused by virtue of this law. The Christian community or a section of it may honestly believe that law to be unjust. The property on which the Christian wants to put up a church belongs to him. It is his *pandarapattam* property. Why should a lawful use of it be prevented by the operation of such a law as exists in this State? This is a grievance. Now suppose, in all instances of sanction being withheld, the Christians begin to put up churches by way of offering *satyagraha*. I am afraid that, if the Christians start a movement of this kind, the situation will be alarming. This is only one instance. Instances of this kind may be multiplied.

Now what is *satyagraha*? Some say it is holding on truth. Let its root meaning be anything. We are not concerned with it. We are concerned with only what is done and what is intended to be done by the *satyagrahis* at Vaikam. The Vaikam *satyagraha* consists in breaking law and defying constituted authority. Apprehending a breach of the peace, as I pointed out before, the District Magistrate issued a prohibitory order which he was perfectly competent to issue according to the law of the State. The Vaikam *satyagraha* consists in violating that order, simply because the *satyagrahis* think that the order is unjust; or they do not mean to respect it because the order is not according to their fancy.

MR. A. HOOGEWERF (*Nominated*): Are not petitions, memorials, protest meetings, &c., a mild form of *satyagraha*?

MR. JOSEPH PANJIKARAN (*Shertallai*): I would call that constitutional agitation. Constitutional agitation consists in making the Government understand that the people feel aggrieved about a particular thing and calling upon Government to remove the grievance. If it is a law or order that causes the grievance, the constitutional agitator would respect the law or order so long as it is in force but would by means of memorials, protest meetings, petitions &c., bring to the notice of the Government the fact of his disapproval and demand its removal; whereas the *satyagrahi's* plan of action is different. His attitude is to disrespect the law or order, so long as it is in force. He will violate law and order until it is removed. He takes with his own hands what he wants; whereas the constitutional agitator only asks, however strongly, for the redress of his grievances. There is a world of difference between the two. Constitutional agitation, however hot, is legal; unconstitutional agitation, however mild, is illegal.

MR. T. LAKSHMANA PILLAI (*Nominated*): May I know from my friend whether *satyagraha* is non-violent?

MR. JOSEPH PANJIKARAN (*Shertallai*): About the non-violent nature of the *satyagraha* method of agitation, much eulogy is bestowed on its originators both by the press and from the platform. They say it is non-violent agitation. I am not prepared to agree with them unless violence can be restricted in meaning to physical force. If that restriction in the meaning of the word 'violence' is allowable, then the action of the *satyagrahis* is non-violent. But if violence is more comprehensive and includes physical force and more—and I think it does—I refuse to think that Vaikam *satyagraha* is non-violent.

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[MR. Joseph Panjikaran.]

MR. A. HOOGEWERF (*Nominated*): What I want to know is this. A large number of people want to represent their grievances to the Dewan of Travancore and to Her Highness the Maha Rani Regent. They are not allowed to do so; what are they to do?

PRESIDENT: That is a hypothetical question.

MR. JOSEPH PANJIKARAN (*Shertallai*): We are not concerned with that. We are concerned with the Vaikam *Satyagraha*. I say it consists in law-breaking and defying the constituted authority of the State. It is violent although physical force is not employed by the *satyagrahis*. If they do not employ physical force, it is because they know that their ruin lies that way.

MR. A. HOOGEWERF (*Nominated*): I rise to a point of order. Are we discussing the ethics of *satyagraha*?

MR. JOSEPH PANJIKARAN (*Shertallai*): I think I am right in discussing it. If the President rules otherwise, I would bow to his ruling.

PRESIDENT: There is no point of order. Mr. Panjikaran is dealing with the circumstances that led to the present resolution.

MR. JOSEPH PANJIKARAN (*Shertallai*): The *satyagrahis* are determined to violate the prohibitory order and cross the prohibition line. They have done so and have been punished for the same. But the number of *satyagrahis* increasing every day, the Government thought it better to prevent the commission of offence rather than punish after the offence was committed. Prevention is better than cure. With this object, the Government have placed Police force at the prohibition line and the *satyagrahis* are just waiting day and night, watching for an opportunity to violate the order. Now the resolution requires these Police forces to be removed.

MR. A. HOOGEWERF (*Nominated*): Have the Government declared publicly that the road in question is not a public road?

MR. JOSEPH PANJIKARAN (*Shertallai*): I am not dealing with that question now. To ask the Government at this juncture to throw open the road is practically asking the Government to give way to the *satyagrahis* at Vaikam and allow these law-breakers to march through the roads triumphantly. On this ground, I oppose the resolution.

There is yet another aspect of the *satyagraha* at Vaikam which also compels me to oppose the resolution.

MR. A. HOOGEWERF (*Nominated*): What about *jathas*?

MR. JOSEPH PANJIKARAN (*Shertallai*): In the resolution there is nothing about *jathas*.

MR. A. HOOGEWERF (*Nominated*): Is there anything mentioned about *satyagraha*? (*Laughter*).

MR. JOSEPH PANJIKARAN (*Shertallai*): *Satyagraha* is inseparably connected with the resolution before the House. Even the speech of Mr. Kumaran refers to it.

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The other aspect of the question is that the *satyagraha* is conducted by the Indian National Congress. The Congress is a British Indian political association. It may or may not have a legitimate function in British India. But what business have they in Travancore? I cannot understand why they should conduct political agitations in this country. I take this as a foreign interference with the internal affairs of our State. I would even go to the extent of calling this a foreign invasion. I recognise the fact that some Travancoreans have joined the Congress, but that does not make the Congress interference any the less a foreign interference. *Satyagraha*, unconstitutional as it is, is an objectionable method of agitation and conducted as it is by a foreign agency, it has become doubly objectionable. And I oppose this resolution for this reason also.

Before quitting this aspect of the question, I would place before this House what I seriously think to be an inconsistent mental attitude of the Travancore public men. Everywhere in this country there is much opposition to the appointment of foreigners in public service. During the discussion of the last budget, we heard even in this Council so much against such appointments and even against the appointment of foreign Dewans. When it is a question of appointing a clerk on Rs. 40, the politicians of the country will be enraged and the Press will be up in arms. But if a British Indian comes to Travancore for political agitation, he is welcomed in Travancore. He will be extolled to the skies by the press and the public men of Travancore. It is for this mentality of the Travancore politicians and of the Press that I cannot find an explanation, and I shall be very thankful if any would be good enough to suggest an explanation.

MR. A. HOOGEWERF (*Nominated*): What do you say about the work of the missionary?

MR. JOSEPH PANJIKARAN (*Shertallai*): For the purposes of our present discussion, I do not think it is relevant.

PRESIDENT: The visitors must preserve order.

MR. A. HOOGEWERF (*Nominated*): European Missionaries who come from foreign lands take up the cause of the depressed classes. What have you to say about them?

MR. JOSEPH PANJIKARAN (*Shertallai*): The missionary comes here for rendering service and not for political agitation. If on the other hand he starts a *satyagraha* of this kind, even if it be for the purpose of putting up a church, I shall be second to none in my opposition to him.

MR. A. HOOGEWERF (*Nominated*): Is Mr. Panjikaran aware that a missionary was assaulted in South Travancore for walking along a road not open to the lower classes?

MR. JOSEPH PANJIKARAN (*Shertallai*): I do not understand your question.

MR. A. HOOGEWERF (*Nominated*): I want to know from Mr. Panjikaran—

PRESIDENT: You cannot put questions at every stage.

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[Mr. A. Hoogewerf.]

MR. A. HOOGEWERF (*Nominated*): May I know whether there is not the Government to put a stop to political agitation by imprisoning those who disturb the peace of the country?

MR. JOSEPH PANJIKARAN (*Shertallai*): Yes; and as a representative of the people, my words will have their weight and I think I must strengthen the hands of the Government against all manner of law-breaking agitation.

Unlike the Missionaries who come here for serving the poor in humility and complete submission to the authority of Government, the attitude of the Congress is one of defiance of constituted authority and even one of arrogance towards the Government of this State. The other day I had a talk with Mr. C. Rajagopalachari, a British Indian Congressman, in the house of Mr. Changanachery Parameswaran Pillai. I asked him why the Congress should come to Travancore to disturb the peace of this country. The very amusing reply that he gave was that the Congress has included Travancore within its programme. Not satisfied with this reply, I again asked him whether it is not proper that the *satyagraha* should be withdrawn. He told me that withdrawal of the *satyagraha* would be a blow to the prestige of the Congress, and that the *satyagraha* would be withdrawn only in case the Travancore Darbar makes a promise to decide the question favourably. Then I asked him what the Congress would do, if the Travancore Government do not make any such promise. His reply was that the Congress would continue the *satyagraha* until the Congress wins. So in the eyes of the British Indian Congressmen, Travancore can be free from Congress interference only if Travancore enters into terms with the Congress. It is high time that the Indian National Congress should be made to understand that the Congress is not the monopoly-holder of all prestige, and that Travancore has its own prestige and independence to maintain.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I know whether he is aware of any law which would prevent a foreigner coming to Travancore for the purposes of political agitation?

MR. JOSEPH PANJIKARAN (*Shertallai*): I am not aware.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Would he advocate a law?

MR. JOSEPH PANJIKARAN (*Shertallai*): I would.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): May I know whether it is passive resistance that he proposes against *satyagraha*?

MR. JOSEPH PANJIKARAN (*Shertallai*): I do not propose any such thing.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): What about *satyagrahies*?

MR. JOSEPH PANJIKARAN (*Shertallai*): They are a set of law-breakers.

MR. A. HOOGEWERF (*Nominated*): If the volunteers at Vaikam stop the campaign, would he support the motion?

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MR. JOSEPH PANJIKARAN (*Shertallai*): That is a relevant question. I would certainly support the resolution. As for that matter, I had several times requested my friend Mr. Kumaran to stop the *satyagraha* campaign at Vaikam at least a fortnight before the Council commences the discussion of this resolution in order that we may vote for the resolution free from the shame of having to vote for it under the shadow of the *satyagraha* bayonet. The reply was that, if the *satyagraha* is once stopped, it may not be possible to start it again. Even after the Jatha I have asked several respectable Ezhavas, and if I remember correctly even Mr. Kumaran, to discontinue the *satyagraha* since Her Highness the Maha Rani Regent has given a very favourable reply to the Jatha deputation. The reply that I got was the same.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Will Mr. Panjikaran be able to stop the movement?

MR. JOSEPH PANJIKARAN (*Shertallai*): It is for the Government to stop it and I can only help the Government.

MR. A. HOOGEWERF (*Nominated*): Is it not an insult to the Government to say that their action is guided by the *satyagraha* movement?

MR. JOSEPH PANJIKARAN (*Shertallai*): What my friend regards as insult, I regard as honour to the Travancore Government. If my friend Mr. Hoogewerf thinks that, in not yielding to the *satyagrahis*, our Government would be commiting a sin, I cannot see eye to eye with my friend.

MR. A. HOOGEWERF (*Nominated*): I ask whether it is not lowering the name of the Travancore Government to say that their action in this particular question would be guided by the action of the *satyagrahis*.

MR. JOSEPH PANJIKARAN (*Shertallai*): I cannot hear him.

MR. A. HOOGEWERF (*Nominated*): I ask whether it is not an insult to the good sense of the Travancore Government to say that their action will in any way be guided by the action of the *satyagrahis* at Vaikam.

MR. JOSEPH PANJIKARAN (*Shertallai*): No. The congress interference and law-breaking agitation are matters on which alone the Government can honourably base its decision so far as the Vaikam roads are concerned.

MR. TARIATU KUNJITOMAN (*Muvattupuzha*): ഒരുകാര്യം സത്യത്തിനും ന്യായത്തിനും യോജിച്ചതാണെങ്കിൽ കാൺഗ്രസുകാരും സത്യാഗ്രഹികളും പറയുന്നതുകൊണ്ട് അതിനെ ഉപേക്ഷിക്കണമെന്ന് മിസ്റ്റർ പഞ്ഞിക്കാരൻ വിചാരിക്കുന്നോ?

MR. JOSEPH PANJIKARAN (*Shertallai*): ഇതിന്റെ മറുപടി ഞാൻ മിസ്റ്റർ ഹൂഗ്വർഫിന്റെ ചോദ്യങ്ങൾക്ക് മറുപടിയായി പറഞ്ഞുകഴിഞ്ഞു.

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[Mr. S. Krishna Aiyar.]

MR. TARIATU KUNJITOMMAN (*Muvattupuzha*): എല്ലാ റോഡുകളിലും എല്ലാജാതിക്കാർക്കും പ്രവേശനം അനുവദിക്കണമെന്ന് ഈപ്രമേയത്തിലടങ്ങിയിരിക്കുന്നകാര്യം സത്യത്തിനും ന്യായത്തിനും യോജിച്ചതാണെന്ന് മിസ്റ്റർ പഞ്ചിക്കാരൻ വിചാരിക്കുന്നോ ?

MR. JOSEPH PANJIKARAN (*Shertallai*): വിചാരിക്കുന്നു.

MR. A. HOOGEWERF (*Nominated*): What about the Central Relief Committee?

PRESIDENT: That has no relevancy whatever, Mr. Hoogewerf.

MR. A. HOOGEWERF (*Nominated*): A big amount was sent by the Congress. Did they refuse to accept it?

PRESIDENT: It is their look-out.

MR. JOSEPH PANJIKARAN (*Shertallai*): Before I conclude, let me refer to the question of conversion to Christianity from the depressed classes. Some members supported the resolution on the ground that, if this resolution is passed, there will be no conversion to Christianity. So far as conversion to Christianity goes, I may in the first instance tell the House that any student of Travancore Church History will agree with me when I say that the first converts to Christianity were from the highest castes in the State. I do not say that the depressed classes have not joined the Church of Christ and that their depressed condition has not served as an incentive to them in their joining the Christian fold. But this incentive is the general hardship and suffering which the high-caste Hindus are inflicting on their non-caste Hindu brethren. I have not come across a single instance of conversion to Christianity because a non-caste Hindu was not allowed to walk through the Vaikam Temple roads. In coclusion, I oppose the resolution, firstly because it relates to a question of fact which a court of law above has power to decide and secondly to yield to the *satyagrahis* at this stage is practically asking the Government to recognise or approve *satyagraha* as a legitimate method of political agitation.

The House adjourned for lunch at 2-15 P. M. and re-assembled at 3-6 P. M.

MR. S. KRISHNA AIYAR (*Mavelikara cum Kartikapalli*): Sir, the question before the House has been called social, religious, legal and political. It has also been argued on all these grounds, but the question of law seems to have come into greater prominence. The proposition itself contains more than one implication. In the first place, it implies that the roads round the Vaikam temple or roads similarly situated are not open to all classes of Her Highness' subjects and the present act of the authorities in barring the roads is a transgression of law. It has been

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pointed out by the learned Law Member that, in Travancore as the law now stands, there are two classes of roads—king's highways over which any class of Her Highness' subjects has a right of entry and the other *Gramaveethies* over which the people have only a restricted right of entry. That there are two such classes of roads has been recognised. Mr. P. K. Narayana Pillai tried to argue away the point by telling us that, by the special provisions of the Land Conservancy Regulation and by the recent Devaswom Proclamation, the lands on which these roads are situated have become vested in the Government and thus they become Government property. From that he went on to argue that Government property is public property and that in effect everybody has a right of access. Accepting the position taken up by my friend, I am of opinion that it does not convert the road into a king's highway over which anybody has a right to pass. After all, the argument of Mr. P. K. Narayana Pillai came to this. All these roads are vested in the Government and therefore they are something like public roads over which everybody has a right. However, that does not touch the further question put forward by Mr. Subba Aiyar as to whether it is the king's highway or *Gramaveethi*. In fact the question can be decided only on the finding of a civil court. If it is conceded that the Vaikam roads and other roads similarly situated are *Rajapathas*, then certainly the resolution becomes unnecessary as everybody has a right of entry in *Rajapathas* and Government cannot prohibit the same. However we can only hold only one of the two positions and that is that they form *Rajapathas* or *Gramaveethies*. If they are not *Rajapathas*, we will not be justified in calling upon the Government to throw them open to all classes. Thus then, we are now on the two horns of a dilemma. The jurisdiction of this Council to decide whether a road is a *Rajapatha* or a *Gramaveethi*, it seems to me, is limited. It is asserted by one side that it is a *Rajapatha* and by the other that it is a *Gramaveethi*. It was also argued that the land on which the road passes has been registered as *Vaikam Kshetramvagai* and hence it is temple property. It is also argued that the P. W. D. has never maintained these roads. It has also been pointed out that the lands do not vest under the municipality. It has been further argued that Ezhavas have been excluded from using these roads. Against these arguments, Mr. Paramesvaran Pillai told this House that some of the trees on the southern side of the temple are branded with the allegorical characters P. W. D. He has put forward several other arguments, I am not going to examine the arguments of the one side or the other. I think it is a question of fact when a denial is made and therefore it has to be determined by a court of law. I ask, is this Council entitled to go beyond its province and settle the question on behalf of the general public. Suppose this Council takes upon itself, that is, assumes the jurisdiction of a civil court to say whether the roads are public highways or *Gramaveethies*, the party aggrieved will have a right to get a declaration about the decision before a civil court. Thus then we shall not be entitled to make a pronouncement in regard

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to this matter. If a pronouncement or a suggestion is made, it will be subject to reversal or confirmation by a civil court. Therefore this Council might be stultifying itself by examining the arguments and evidence on either side and making a pronouncement. I therefore very earnestly call upon the members of this House once again to consider the position as to whether we are competent at the present stage to pronounce once for all, and enter a finding as to whether these roads are *Rajapathas* or *Gramaveethies*.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Assuming for the sake of argument that these are not king's highways and are *Gramaveethies*, have the Government any power to declare them as public highways?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): No.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Has not this legislature the power of overriding the existing law?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I believe Mr. Menon knows that when a Bill is passed the legislature has got a right to do away with existing rights or to confer new rights. But by a resolution it has no jurisdiction to do the same.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): May I know whether the resolution as it stands recognises only a certain course of action as regards the question of facts.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I said that the recommendation has more than one implication, and one of the implications is that the roads do form part of the king's highway and therefore all classes of people have got a right of entrance. I believe Mr. Govinda Menon stands upon rights and that he is not begging for the rights before Government. It was upon the assertion of their rights that they wanted to call upon the Government to throw them open to all classes.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Has it not been represented in this House that the notification about the throwing open of all the roads to all classes has been stultified practically and that —

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I am sorry I have to render an explanation to a learned lawyer like Mr. Govinda Menon. However, I wish to tell the lay portion of the House that it cannot confer rights or take away rights. The notification is based upon an old order of the Huzur Cutcherry. It is only a Royal Proclamation or a legislative enactment that can take away or confer rights. Mr. Paramesvaran Pillai relied upon the Government notification in calling upon them to pursue the same. Then arguing

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on the question of law, he told the House that the ruling in 5 T. L. R. might be brushed aside on the ground that the observations are *obiter dicta* and that 10 and 19 T. L. R. did not touch the question and therefore he fell back upon the notification. I believe Mr. Govinda Menon knows that a notification cannot and does not confer rights. It only advises the subordinates of the department as to what course they should pursue. If they do not do so, it only says that they will be visited with the severest displeasure of Government and condign punishment.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): I suppose that includes High Court also.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): That is a matter entirely between the Government and their servants. It does not confer any rights upon the public. The heads of departments are sending over copies of diaries to—

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Does Mr. Krishna Aiyar deny that the High Court interpreted it as an authority and not in any other light?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): The High Court did not interpret it as an authority. They merely said that some roads are *Gramaveethies* and that some are not. It is not an interpretation of the notification that their Honors went into. They merely said that every member of the public is entitled to enter into a public highway. They did not base their dictum upon any portion of the notification. There are two classes of roads in Travancore.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): In case Government declare a *Gramaveethi* to be a public highway, is it not open to a member of the public to contend that it is not so?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): The aggrieved party has a right of appeal to a civil court and can get the grievance redressed.

I only say that it is not our province to settle whether the roads in question are open to the public or only to a section of the public. Therefore we shall not be justified in deciding the question of fact as to whether a particular road is a *Rajapatha* or a *Gramaveethi*. Therefore I once again call upon this House to deeply consider that aspect of the question.

MR. A. HOOGEWERF (*Nominated*): May I know whether every law passed is not binding on humanity?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I believe Mr. Hoogewerf knows that when the law is administered and judgment given in favour of one party, the other party is almost always discontented. That means it is not humanitarian so far as one party is concerned. But it may be humanitarian so far as the other party is concerned. Law has been said to be an embodiment of common sense, while

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other people say it is not founded on reason. I only submit to the House that we have no jurisdiction in this matter and that we shall not be justified in arrogating to ourselves the jurisdiction of civil courts in deciding whether a road is a *Gramaveethi* or a *Rajapatha*. And if we decide, we will be only transgressing our jurisdiction, and by so doing, we shall be certainly stultifying ourselves. That is the first point I wish to state.

I have already suggested that the question has been argued in more than one aspect and that the legal aspect has stood on the forefront of the discussion. The arguments advanced by the law member have not been met except by an observation that these decisions are *obiter dicta* and that a certain notification over-rides the strength of the rights upheld in 5 T. L. R.

Coming to the humanitarian argument, certainly I am at one with every member of this House that the Avarnas are entitled to have the disability removed and that we should as far as lies in our power do what we can to remove these disabilities. But the question arises here, are these disabilities social, are these disabilities religious, or are these only sentimental? One of the members of this House and also the learned law member told us that the disabilities are purely sentimental. The law member told us that an offer was made on behalf of Government that, if they regarded these roads as a matter of distance and of inconvenience, the Goverment would undertake to construct easy roads by which they might pass. But they seem to have said that they wanted only a declaration as to the right of passage.

MR. A. HOOGEWERF (*Nominated*): Suppose there is a dispute about the building of a church or a mosque near a temple. One party wants to build a church and the other says no. Will Government also in such a case ask the parties to go to a court of law or will they ask the Devaswom department to decide the question?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikappalli*): I do not see that it is relevant to the matter before the Council. I do not therefore wish to answer it.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): If separate roads are to be opened for separate classes, may I ask my friend whether it will not be an attempt to perpetuate the present difference?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I am one with Mr. Nidiry in thinking that separate roads should not be given by the Government as responsible guardians of the public. These people want the road not for any material purpose, but only to assert their rights or to wound the religious feelings of other people. The Government might have thought it policy on their part not to wound the susceptibilities of these people.

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MR. A. HOOGEWERF (*Nominated*): Is Mr. Krishna Aiyar aware that, at Vaikam, the main bazaar, corresponding to the Chalai bazaar at Trivandrum, is in that road?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I may tell Mr. Hoogewerf, that possibly I have more knowledge of Vaikam than Mr. Hoogewerf. The shops of Vaikam can neither be called a bazaar, nor can the legal word market be applied to them.

I was submitting to this House that the question was not a question to be argued on humanitarian lines. There was a lot of sentiment imported into it. To a very great extent, it was a matter of sentiment; that was what the mover said. They could not submit to the indignity of the prohibition to pass along the roads. Certainly, I concede the fact of inequality. The question here is whether the law permits it and whether therefore we shall be justified in assuming that the law permits it and pass this resolution. Again it was urged that, all round the Vaikam temple, these roads lie. I have gone to the Vaikam temple purposely to see the roads all round. I am in a position to deny the statement that there are roads all round the Vaikam temple. On the north-western side, there is no road. It is a blind road and people pass along the place which is the property of a private individual. On the north-eastern side after the road ends, a pathway proceeds along the road and is registered in the name of a private individual. I may also say to those members of this House who have not gone to Vaikam that, on the south-eastern side also, there is no road. There is only a pathway. The main roads are to a certain extent on the southern side and on the western side of the temple, and to a certain extent on the northern side. It was pointed out that all these roads were on the western side and therefore the public cannot go through one place to another. That is a question of fact which has to be settled. However, it is only a piece of evidence to be considered when the question comes up. That apart, discussing the question of sentiment, whether the sentiment of one side should override the sentiment of another, it has been shown that, for generations together, from immemorial times, a certain class called *Avarnas* were excluded from passing along these roads. Now they want to pass through these roads.

MR. N. KUMARAN (*Nominated*): May I ask my friend who are the class of people whom he understands as *Avarnas*?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I used the word with reference to the people who are called unapproachables. I do not want to use that word if my friend objects to it, because, so far as I am concerned, I do not recognise unapproachability and untouchability.

MR. N. KUMARAN (*Nominated*): There are a number of classes who are called *Avarnas* and who are still using the roads. That is the reason why I asked him the question.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I bow to my friend's criticism. If a word includes more than one class, I shall

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use any other word that may be suggested by him. I think I am entitled to use it with this interpretation. I would think that an *Avarna* means in ordinary parlance the *tindal* caste.

MR. N. KUMARAN (*Nominated*): Even people belonging to the *tindal* caste are allowed to pass through those roads.

MR S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): That too is a question of fact. Mr. Subba Aiyar said that *tindal* caste people did not pass along those roads. It has therefore to be decided by another tribunal. It has to be proved that the *tindal* castes are allowed to pass through those roads.

MR. A. HOOGEWERF (*Nominated*): May I ask Mr. Krishna Aiyar whether it is not a fact that a Pulaya or a Paraya convert to Christianity is allowed to go along these roads and even to stand near the temple gate and look into the temple?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): The question has been put by Mr. Hoogewerf himself so many times that I do not think that I need answer it. Mr. Subba Aiyar has given an answer to the question and I accept it.

MR. A. HOOGEWERF (*Nominated*): I forgot it.

PRESIDENT: He is not willing to give an answer.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): On religious conviction, the high-caste people think that unapproachability is the breath of life to them. They think that, if a member of a *tindal* caste passes along those roads, he would defile their deity and the high-caste man may possibly go to the extent of closing the temple itself. It has already been said that religion may not be based upon reason. It may be called superstition by one side. It may be said that it is an article of faith by the other side. Whatever that may be, one side puts it on sentiment and the other side on religious belief, and when the two are in conflict certainly sentiment must go and religious belief must come up.

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanmtitta*): May I know if he says that it is superstition?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I did not say so. I said it may be called a superstition by one, and it may be called a religious belief by another. I never said it is superstition. Far be it from me to brand a certain view held by a large class of people, not only Brahmins but other peoples also, as superstition.

The third portion of the argument also is to a very great extent humanitarian again. Hard terms have been used by this side of the House as regards social disabilities under which the *avarnas* were labouring—I expect Mr. Kumaran will not object to the word *avarna*.

MR. N. KUMARAN (*Nominated*): I have absolutely no objection.

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MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): As regards social disabilities under which *avarnas* were suffering, hard terms were used. I remember one of the speakers going to the length of calling it a horrible barbarity. Another gentleman used still harsher language. But whatever that be, I am not questioning the language. Very strong words were used as regards a certain class of people of the Travancore State.

MR. A. HOOGEWERF (*Nominated*): Is the member aware that Swami Vivekananda called this land a lunatic asylum?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I do not know what he said. He may have called the inhabitants of this land as lunatics. But that however does not touch the fringe of the question. We are not here discussing Swami Vivekananda's question though Mr. K. Paramesvaran Pillai was telling us that we are nearly lunatics, if not absolute lunatics, if we did not accept his view.

MR. A. HOOGEWERF (*Nominated*): Then why does he touch on the question of barbarity?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I must tell Mr. Hoogewerf that I did not touch the question. I was only repeating the hard words used. I wanted only to bring to the notice of the House the fact that hard words were used and that hard words are not arguments. In the practice of the law where argument fails, the solicitor is abused. However, that apart, I am only submitting to the House that hard words are not arguments. They cannot induce reason. If we want harmony, if we want to go in sympathy, then, we should not create differences by using hard words. It is admitted that the *savarnas* cannot get on without *avarnas*, and the *avarnas* cannot go on without the *savarnas*. It is something like the combination of labour and capital. Both have to go together. Therefore, if we use words, it may only alienate sympathy. Hard words such as have been used in this House do not better the cause which they are intended to advocate.

MR. A. HOOGEWERF (*Nominated*): May I ask him whether he recollects the expression used by him that this only irritates the feelings of the opposite party.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): Sir, may I give a denial to this statement that is fathered upon me?

PRESIDENT: Mr. Hoogewerf, he said nothing of that kind.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I merely said it was a matter in which there is sentiment on one side and religious conviction on the other side, and between these two we must choose the latter. Now discussing the humanitarian side, we are prepared to concede that the *avarnas* are suffering, or have been suffering, various disabilities. It is only a question of time when the whole superstructure of orthodoxy tumbles down. I doubt whether by the present *satyagraha* movement they have introduced a spur to induce these people to come together and make a stand in the matter of untouchability. It had almost vanished. Unapproachability practically

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does not exist. It exists only in some remote places. If, at this stage, we try to arrest the current—

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): May I ask my friend whether the passing of this resolution will not help us considerably in that direction?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I do not think so. Because, as stated by Mr. Panjikaran and by others, it is not a case of real disability. It is a matter of sentiment. When once sentiment is allowed to come in, there may be further calls upon sentiment. You cannot say for what purpose it will be applied tomorrow. It may be called in for something tomorrow, and on the third day it may be called in for something else. This Council may not be in a position to grant them all these things. In my opinion then, a social disability cannot be removed by the acceptance of this resolution. Social reform can be brought about only by the education of all people and by other methods which do not come into question here.

MR. N. KUMARAN (*Nominated*): Whose education?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): Education of all the parties concerned; education of the *avarnas*, education of the *savarnas*, and education of everybody.

MR. N. KUMARAN (*Nominated*): Are not *savarnas* sufficiently educated to have a clear idea of all these things?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): Certainly not. The present system of education has touched only the fringe of the population.

MR. M. R. MADHAVA VARIAR (*Chenganmur* cum *Pattanamtitta*): May I know whether educated *savarnas* in Northern India are not opposing untouchability?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I am not in a position to answer the question with reference to the *savarnas* of Northern India.

MR. A. HOOGEWERF (*Nominated*): May I ask whether Mr. Krishna Aiyar was or is a member of the Congress?

PRESIDENT: That does not arise.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I am not prepared to answer it. I do not say anything against the Congress or for the Congress. I do not refer either to the Congress movement or the *satyagraha* movement or the ethics of the *satyagraha* as Mr. Hoogewerf puts it. For social reform and social amelioration this is not the platform from which we have to secure redress. That is a matter of education, of time. I do not propose to discuss the religious aspect. Mr. K. Parameswaran Pillai may scoff at it if it is called a religious idea. It may be a religious idea or it may be merely a social one. But I may say that what is sauce for one may not be sauce for another. I

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believe every member of this House honestly believes that a good many members of the orthodox community do believe that it is a religious matter to them. Then there are only a few minor arguments put forward by the other side. I heard Mr. Hoogewerf put the question to more than one speaker as to why these people cannot be allowed to go through the roads when a Christian or a Mahomedan is allowed to pass along them and even a dog or a pig is allowed to pass along them. I would say that that question does not touch the problem. You may talk of the unreasonableness of the custom. But you have to tackle the problem admitting the existence of that custom and admitting the fact that a certain section of the people believes it to be religious.

MR. A. HOOGEWERF (*Nominated*): I believe *Sati* was abolished by State legislation.

PRESIDENT: You have already put that question. I think it is the twelfth time you are putting it.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I ask whether, in spite of the abolition of *Sati* by legislative enactment, there are not some women who, by abstaining from food, pine away and virtually commit *Sati*?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): Yes. Law cannot affect emotions or sentiments. Law can only affect the physical body. The enforcement of widowhood, by the Brahmins, may be a case of *Sati*. Mr. Hoogewerf may suggest that *Sati* was abolished physically.

MR. A. HOOGEWERF (*Nominated*): I am only speaking of the material aspect of the question.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I only say that, because there has been oppression in the past, because there has been dominance of the caste Hindus in the past, I do not know what it leads to. If X is Y, I do not think it follows that A is B.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): May I tell Mr. Krishna Aiyar that the argument now advanced is that Government interfered once to right the thing, and therefore we recommend to Government now also to right it. We only request that the same policy may be pursued.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I can understand that assertion. It has been made by Mr. Changanacherry Paramesvaran Pillai and Mr. Kumaran in their speeches and by a number of other speakers. If it comes in the form of a question, I am bound to answer it. If it is an argument, then I have to consider it. But I am submitting that the argument put forward was that there were inequalities in the past, oppression in the past, and a state of things in the past which had to be remedied. But is that the reason for asking us to accept the resolution as it stands? After all, coming

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to the disabilities under which the *avarnas* suffer now, my friend pointed out only two instances of civil disabilities under which they are suffering now. One was the existence of 13 or 14 schools where *avarnas* are not admitted, and another was the existence of certain roads along which they were not allowed to pass.

MR. N. KUMARAN (*Nominated*): I may assure my friend that I did not attempt at a cataloguing of the instances in which they have disabilities. I mentioned these two as two instances in point.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): If it is so,—

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): What about the *satrams*?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): In all *satrams* in Travancore, so far as I know, there are more than one building and buildings have been specially allotted to Christians and other classes. I live very near a *satram*. Not only the Christian, but the Pulaya and the Paraya use it. So far as my knowledge goes, I do not see there is any disability with regard to these *satrams*.

MR. A. HOOGEWERF (*Nominated*): If there is a disability, will he go to the civil court or to the Council to do away with that disability?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I do not hear *any* word of what Mr. Hoogewerf says. So I am not in a position to answer him.

MR. A. HOOGEWERF (*Nominated*): I am asking, whether, if there is a disability with regard to any *satram*, the party is to go to a civil court or to the Council for redress.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): This Council is scarcely the place where the disabilities with reference to the *satrams* have to be vindicated. This Council has certain duties to perform which are prescribed by the Legislative Council Regulation and we have only to do those duties. No doubt we are making reference to other matters.

MR. A. HOOGEWERF (*Nominated*): I am sorry my friend has misunderstood me. Mr. Krishna Aiyar said that the aggrieved party must resort to a court of law. I ask, did we resort to a court of law for the removal, by Government, of the several disabilities of the depressed classes, that existed in years past? Did the Government admit these people to all public offices, *satrams* and schools, and give them seats in municipalities, in the Popular Assembly and in this House itself, as a result of a law suit?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): My only answer is that, as, from this side of the House, I am not able to hear him, I am not able to answer.

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MR. A. HOOGEWERF (*Nominated*) : I will repeat the question.

PRESIDENT : Evidently Mr. Krishna Aiyar is not prepared to answer you.

MR. A. HOOGEWERF (*Nominated*) : He did not say so. He said he did not hear me, and I am prepared to repeat my question.

PRESIDENT : I must request you not to obstruct members by putting questions constantly like that. You must allow them to proceed.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*) : Sir, I was discussing the question of the disabilities from which the *avarnas* were suffering.

MR. A. HOOGEWERF (*Nominated*) : I cannot hear what Mr. Krishna Aiyar is saying.

PRESIDENT : You are welcome to sit nearer.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*) : So far as social disabilities are concerned, the Council is not in a position to help them.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*) : What does my friend say as regards their disability in entering military service ?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*) : It is not a disability at all.

PRESIDENT : I am not able to hear you. What is your question, Mr. Nidiry ?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*) : I heard Mr. Nidiry. I may tell him—

PRESIDENT : You must address the question to me. I did not hear you, Mr. Nidiry.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*) : Are the non-caste Hindus allowed to enter the military service in Travancore ?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*) : So far as military service is concerned, in other words, so far as Her Highness' Body Guard is concerned, the matter is beyond the purview and jurisdiction of the Legislative Council and even beyond the Head of the Government. It is the Body Guard of Her Highness and Her Highness may choose whomsoever she wants to serve in Her Highness' Body Guard. It is no question of any civic right at all. I have heard, not only on this occasion, but on other occasions also, that it is the right of the people to serve. Serving is only a liability and not a right. That is my view of the case. Whatever that be, so far as the Body Guard is concerned, the question does not come before us in a shape in which we can answer it. The law on the matter has been placed before us very clearly, and the points raised have not been answered satisfactorily. Therefore, we are not in a position to accept the resolution.

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[Mr. N. Ramakrishna Pillai.]

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Sir, I shall only deal with the legal aspect of the question which has just been adverted to by Mr. Krishna Aiyar and presented to us during the course of the discussion on this resolution. *A voice*: (*Louder, please.*)

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): The Shorthand Reporters would be able to follow him only if he comes nearer.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): The learned Law Member relies on the authority of the decision in V. T. L. R. for the position that the way in question though a public way, is not a king's highway and as such cannot be said to be a public road that could be used by all classes of the citizens. An examination of the law relating to public roads has thus become imperative and since the question has been raised, it is well that this House should go into this all-important question a little more minutely. In relying on the decision in V. T. L. R., Mr. Subba Aiyar has adopted the classification made in that judgment of public ways into two kinds, (*a*) common ways and (*b*) public high ways otherwise called King's highways. It would appear from the report that there are three kinds of roads—private roads and 2 kinds of public roads. In the judgment referred to, the distinction drawn between the two kinds of public ways is this. King's highways are open to all people and for all purposes, while common ways may be used by all people but not for all purposes, or are not open to all for any purpose.

One important issue that arises out of this discussion is whether any such distinction in respect of public roads maintained at the expense of Government and therefore at the expense of the general tax-payer should any longer be maintained.

The decision in V. T. L. R., was given in Adi. 1063, about 37 years ago. It turned upon the interpretation of the Government Notification dated 21st July 1884, which declared in effect that the custom of excluding unapproachables is not a valid custom in respect of public roads.

Their Honors say:

"Public ways are open to the free use of all classes and for all legal purposes in virtue of the Government Notification dated 21st July 1884.

"And there can be no question of the power of Government to issue such a notification. Where the property in a public road, highway or thoroughfare is in the State, the State can clearly lay down rules for its user...But assuming the property to be in the State, the question arises, does the State recognise two classes of roads—the one public to all persons without distinction for all purposes not forbidden by law—the other public only in a more restricted sense—certain persons being excluded or certain forms of user being tacitly forbidden? The question is, as has been said, a difficult one. Having considered it, I think that the distinction does exist, and that this being so, we (who are bound to interpret the law, not make it) must recognise the distinction. To hold otherwise would be simply to defeat the obvious intent of the Proclamation of 1884 already referred to."

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It will thus be seen that the Court was only interpreting the law laid down by Government in respect of public ways and they held that the State has recognised the distinction and they had therefore to give effect to it. That it is entirely for the Government to lay down rules in respect of public roads for the guidance of Courts is clear from the following observations in the judgment. It has also to be noted that the Court in this case chose to draw a distinction on the ground that it would be bad policy to hold otherwise. For, Their Honors say:

"We feel bound to draw a distinction between what is called the King's highway and ways belonging to towns and villages. In a case of this kind we must have recourse to discretion, which is in fact customary reason and decide according to our knowledge of the customs of the country, of what is just, what is expedient and what is sanctioned by experience of public policy."

And the distinction seems to have been drawn on the analogy of the Madras decision calling attention to the distinction between the right of the public to use highways for the purpose of ordinary convenience and the right to use them for processions.

Their Honors say:

"Of course the Government at all times is competent to declare with due regard to the convenience of the public or any section thereof and on proper consideration of the feelings of the people that a way which has not been a public highway is a public way common to all classes of people for all uses. Unless and until that is done, the custom of the place should be our guide in dealing with disputes relating to the use of any particular way.... No innovation, under any circumstances, can be permitted unless in the opinion of the Government it is necessary to suit the convenience of the public or to promote the well-being of the people; otherwise discontent and excitement are caused without any good result following from it."

Again:

"It is of course in the power of the Government to declare any of these ways a public highway but until the Government does so, the Courts are bound to be guided by this customary law".

Mr. Krishna Aiyar said that Government cannot make any declaration by means of a notification; but here is the opinion of the High Court.

Mr. Justice Kunjiraman Nair, who wrote the leading judgment, says:

"The construction which should on the whole be put upon the terms 'public road' and 'public highway' as used in the Government Notification seems to me to be that they were intended to denote public roads falling under the category of King's highways over which alone a right of unrestricted user could... be fairly conceded".

And he goes on to say:

"Satisfactory proof on the point is often not procurable and the rule therefore is not easily workable in practice, but the Courts must do their utmost to arrive at correct conclusions on the point in the best way they legally could. I hope and trust however that Government will, at no distant date, lay down clearly what kind of roads in the State are to be regarded as King's highways".

It will thus be seen from the foregoing observations that the Courts at that time considered it a *matter of policy* to draw a distinction like this, and asked Government to lay down rules in respect of roads which

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[Mr. T. K. Velu Pillai.]

they classified into two kinds. So far as I know, Government have not till now acted in accordance with the recommendation made by the High Court and the notification of 1884 is still remaining unaltered. The Courts have thrown the whole responsibility of declaring whether a public way is a King's highway or not upon the Government and they say that it is in the power of Government to do so and not in the power of the Court, and that Government should declare whether any such distinction was intended by them and if so which of the roads they maintain are to be classed like these.

The resolution under discussion requests Government to throw open the Vaikam roads and other roads similarly situated to all classes of the people. It only asks what the Court says the Government alone has the power to do. From the discussion there can be no question that the roads in dispute are public roads, whether King's highways or village thoroughfares. This was also what Mr. Krishna Aiyar said during the course of the discussion. What Mr. Kumaran said and what the resolution requires is that these roads should be thrown open by the Government to all classes of the people alike. It is impossible for me therefore to understand why the learned Law Member says that it is question of fact and that Courts alone can and ought to decide this question. The resolution in effect wants that no such distinction as is drawn by Courts should be made in respect of public roads. But Mr. Subba Aiyar says, and he is supported by Mr. Krishna Aiyar in this respect, that Courts have made that distinction and that distinction should at all events be maintained. I submit that this is no answer at all to the questions raised during the course of the discussion. If the roads are not King's highways already, they should be declared to be so. We have every reason for saying that there is no necessity to go to Court at all. The resolution simply asks the Government to carry out the recommendations made by the High Court more than 37 years ago to declare such roads open. If the Government think that a Proclamation is required, they can very well issue one. Instead of leaving the question for the decision of the courts the Government, I think, should declare whether these roads are public roads or not as they alone have got the power to do so. My view is that these roads should be declared to be King's highways.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Does Mr. Ramakrishna Pillai recognise any distinction between the position of Government, as Government of the country, and the position of Government as trustee of some of the Hindu Devaswoms?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Government have often declared that they are not the trustees of any temple. Their position is that they are the proprietors. That has been made clear by the Proclamation.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I wish to know whether *he* recognises the distinction between the Government, as Government of the country and the Government as the trustee of any Devaswom.

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PRESIDENT: In the light of the answer that Mr. Ramakrishna Pillai has already given you, this question does not arise.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I have to ask another question. May I ask Mr. Ramakrishna Pillai, whether, in case a trustee commits an act of mis-feasance or mal-feasance or does something through error of judgment, a suit will not lie against that trustee, even if, in some other capacity, he can deal with the question in a different manner?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): That depends on the question whether he is a trustee or not.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): In case he is a trustee?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): That is a general proposition and I am not prepared to discuss it at present.

MR. K. C. MAMMEN MAPPILLAI (*Commerce and Industries North*): Sir, after listening to the elaborate and abstruse disquisitions, especially from the learned legal members of this House, a representative of the man in the street, if I may say so, like me, finds it very difficult to pronounce any opinion on this matter. They have made it so very difficult for plain persons to make any head or tail out of all these things. The matter has become a series of muddles and riddles. So, I was wondering whether there was any use in persons like myself saying anything on the subject. On further reflection, I thought that, after all, there was also the standpoint of even the plain man. In large questions of policy it has often turned out that the predictions and the assurances of the greatest experts in law are wrong, while the sentiments and aspirations of the country-man and the illiterate man turn out to be correct. Therefore, merely to put before this House the sentiments of the large mass of persons who are not lawyers, I want to say a few words.

In the first place, I should like to say, as a counterpoise to the weighty and positive assertions made in this House, that there are very few customs or observances about which two sides cannot be taken. As an extreme instance, I may refer to what I read the other day, an imaginary piece of writing by the inhabitants of the Cannibal Islands, complaining about the attempts made by Europeans to prevent them from eating human flesh. It is said, "Here are a set of people who are attempting to prevent us from indulging in eating the most delicious and the neatest diet, namely the human flesh; these are a set of people who eat the dirty flesh of the dog or the ox or the pig. Why should they interfere with our social customs and observances and try to prevent us from indulging in the most covetable dish in the world? We have been accustomed to it for the past so many generations; it has been handed down to us from generation to generation." Now, I dare-say, if one of those cannibals had attended the discussion in this House for the last two days, they would also add another argument and say "This is our religious observance; the Europeans' interference in the matter wounds our religious sentiments and susceptibilities". They

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[Mr. K. C. Mammen Mappillai.]

would certainly say that the attempt to prevent them from indulging in that coveted luxury of eating human flesh is somewhat wounding their religious feelings. I should also in a more serious fashion refer to the famous passage in the New Testament where Jesus Christ, while denouncing the selfishness and narrow-mindedness of the Jews, refers to the custom among Jews that if only a Jew wanted to avoid giving anything to his father or mother he had only to say '*corban*' and thereby dedicate his properties to God, and get himself absolved of the necessity of contributing anything to the needs of his father. That is the typical way in which ordinary justice and sentiments of humanity are sought to be set aside on the ground of morality, religious sentiment and legal technicality. I do not say that all those who opposed this resolution were actuated by any sentiment other than the most honourable. Of course, the greatest factor—there may be other factors also in all these oppositions to progressive movements and forward steps—is the conservatism of all the people. When we have been accustomed to a certain state of things, certain surroundings and environments, any disturbance of those environments and surroundings is sure to cause pain to the conservative people, however just the progressive movement may be in its purpose. That is exactly the feeling of the caste-Hindus in the present instance. There are the depressed classes who are complaining that the caste-Hindus are not allowing them even the right to go round the road. At the same time, the caste-Hindus themselves are feeling glad in admitting all other communities and religionists and thereby disturbing their social or religious custom. As I already said, the chief factor that works against these progressive movements is the conservatism of all communities, high or low. That is the chief support and strength of all these people, who have opposed in all ages and times the legitimate progress of others. That is the most objectionable part of the forces that have opposed progress under all circumstances. There are, as I said, other factors also. We have to take into account all these other factors with the greatest respect and consideration. There is no use in attributing motives or in finding fault with people, because they advocate the opposite side. But I have to say that, in spite of the temporary pain or dislocation produced by the attempt at changing the established order of things, the time will come when it will become absolutely necessary for the constituted authorities or society at large to get rid of customs that have become absolutely pernicious or that have become at variance with the dictates of natural justice or incompatible with the primary rights of citizenship. In these matters we cannot all at once bring about the ideal conditions of justice and fairplay. But what I should like to say is that, when the communities labouring under injustice and inequalities have become conscious of the injustice and inequality and when they want these to be removed, it is surely not fair, and it is not safe, to the highest interests of the State, for those who are already in privileged positions, to oppose the aspirations of those who are suffering injustice. In all these matters, sentiments of natural justice, sentiments of rights,

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the irreducible minimum rights of humanity,—in all these matters I do not think that any vested interest or any argument, based on religion, custom, morality or sentiment, should be allowed to stand in the way. It may be that the demand of the 17 lakhs of people who are suffering is not sufficiently strong. If we are convinced that the demand is a reasonable and just one, surely it is not statesmanship to wait till it has become irresistible and till social life begins to oppose all these recriminations. Once we are convinced that the demand is legitimate and that public opinion is in its favour, it is not at all statesmanship to delay the granting of these legitimate requests. It is no use, in such cases, to counsel to the suffering persons, "Be satisfied with what remedy you have already secured; we are all sympathetic towards you." People will not be satisfied with pious sentiments or expressions of sympathy which will postpone the granting of their demand to the Greek calendar. What they want is actual fulfilment of their demand. They say that in other countries it is not by social oppression or political oppression that they obtain what they want. Of course, those who want to prevent the attainment of the demand of the lower strata of society will always say:—'Wait for some time; the time has not come; you are going on at tremendous speed.'

Now, if we turn our attention to a brief consideration of the subject under discussion, it is an admitted fact that the restrictions on the rights of the Ezhavas and other communities are utterly repugnant to the self-respect of those communities. There are members in the Ezhava community, for example, who are as intelligent, as patriotic, as refined as any of the members of the other communities in India. The members of the Ezhava community find that, while the members of other communities are struggling and fighting for obtaining freedom for India or asserting the claims of India for a place of equality with any other nation of the world, they have to fight with their own brethren for the most elementary rights of citizenship. It is a most telling circumstance when a person becomes self-conscious and self-respecting; it is idle to keep quiet and go on suffering indignities. If such circumstances in Japan and Russia have led to revolutions, they must have also some influence upon the backward communities in our country and may incite them to assert their position as human beings. It is in this connection a source of great encouragement that the communities in Travancore which are not labouring under these disadvantages and social dissabilities have in large numbers come forward to espouse the cause of their brothers. I do not attribute motives to anybody and it is rather an extremely serious situation. I do not question the motives of anybody but I am only expressing my admiration for those members of the caste Hindu community who have so boldly come forward to espouse the cause of their brethren. Why do you support these people? The motive of conversion is attributed to some. The motive of preventing the Ezhavas and Pulayas from becoming Christians is attributed to some. In spite of all these discouraging circumstances, I could say also, in spite of insufficient response from the community directly affected, these members of the caste Hindu community

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have come forward and done all that they can do humanly and I thank them from the bottom of my heart. Mr. Hoogewerf: (*Hear, hear.*) I should like to say that we are all very much thankful to observe from the reply vouchsafed to the Jatha by Her Highness the Maha Rani Regent that the Government of Her Highness the Maha Rani Regent would be largely guided by the discussion and voting on the resolution in this House to-day. That was a very encouraging response to the demands of the deputation and so many are looking forward not only in Travancore but outside Travancore as well, to the resolution and its discussion. I should also say that, after having this assurance, one would have expected, if I may be permitted to say so, that Government would have left the matter to the unfettered decision and discretion of the non-official side of the House. But from the direction given to the discussion yesterday by the spokesman of Government, I am led to think that Government have decided to take a definite stand in this matter, and I do not know how far that is justifiable or consistent with the reply given by Her Highness the Maha Rani Regent to the deputation. In that connection, it may become necessary, I regret to say, that the members on the Government side, Europeans and others, may be compelled to vote in a manner which, I cannot help thinking, may not be in keeping with their private sentiment. Mr. Subba Aiyar's arguments were in keeping with the high-level of forensic eloquence for which he is so very famous and which has taken him to the foremost place in the legal profession. But in a grave crisis like this, I do not expect him to speak as a lawyer stepping in support of one side only as if he were arguing before a Judge. This is a great crisis in the fortunes of our country and I should have expected and been glad if Mr. Subba Aiyar had spoken not as the great lawyer he is but as the representative of the Government in this matter. (Mr. Hoogewerf: *Hear, hear.*) (*Laughter*). You emphasise certain aspects. You are not bound to emphasise both sides of the question very fully or even carefully. You can score off your adversary. That is the difference between the lawyer and a spokesman of the Government speaking about the attitude of the Government. I thought that there was a great difference between the two.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Does he know that the Government Vakil is generally supposed to represent both sides while appearing for certain cases and he is as a matter of fact doing it ?

MR. K. C. MAMMEN MAPPILLAI (*Commerce and Industries, North*): I know. As I said, there are two sides; and when I listened to Mr. Subba Aiyar, of course I could not follow the intricacies of the legal arguments, but there were some arguments which I thought convinced me. But when this question was discussed by others and when I listened to them, I thought that after all there were other sides also to the question. I was greatly relieved to find that I should exercise my own discretion because there may be arguments on both sides. As I said, the cries of denunciation have been associated with

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religion, with selfishness and self-interest, but I do not want to say that in several cases it is so. But this right to use a road, I should think, is the last thing which could be associated with religion, whatever be the legal justification for it. It is absolutely unjustifiable because there are ever so many things that have to be taken into consideration. Moreover, it is the glory of Indian civilisation that social observances have been tacked on to religion on sanitary and other grounds. One justification is that many of the rules of caste are in consonance with the highest sanitary principles and therefore in order that people may observe them a religious colouring has been given to them. That is the argument that so many of us hear in India. But here, on the other hand, you just give to the custom an importance which should not be given to it and make it impossible for the Government or this House to blot that opinion. We all know that ever so many murders have been committed not only here in India but throughout the world for the cause of religion.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): May I point out that it has not been the case with the Hindu religion?

MR. K. C. MAMMEN MAPPILLAI (*Commerce and Industries, North*): It is a great glory of India that it has not been the case. In the name of religion, murders have been committed. With regard to social custom and all other things, during the last twenty or twenty-five years, all of us are familiar with what happened—the one step which went counter to the social prejudices of the people is the final and deliberate attempt made by Sir P. Rajagopalachari, to introduce into the schools in Travancore students belonging to the depressed classes. There was the greatest possible opposition among all classes and, in the earlier stages, when the notification was sent round, the Government Inspectors and others returned saying that it is impossible to give effect to the order. But when once Sir P. Rajagopalachari made it known to the officers of Government that he was very serious about his business and those officers who failed to carry it out would be treated with severity, in a very few months' time that opposition was really overcome. I remember there was a representative of the other class in a place known as Pullad in the eastern part of the Tiruvalla taluk who was an old gentleman of eighty years who said firmly with a big sword in his hand that he will stoutly oppose such a new policy from being given effect to and would rather die than yield to it. Everybody was afraid, the First Class Magistrate went there and still he was determined to die or prevent this from taking place. But in the face of that strong opposition, Government found it very easy to carry out that great reform and if Government did not find it difficult to introduce the members of the Pulaya or the Paraya community into the schools within the State, I do not at all think that there will be any very serious opposition as regards this also. I know of several instances in which people said there would be opposition, there would be bloodshed and murder. But in the former case what was given up in the previous

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administration as impossible because of popular pride, was done in a later administration by Sir P. Rajagopalachari (Mr. Hoogewerf: *Hear, hear.*) It is alright to argue it before persons who do not know the real situation and what may be the real consequence if this measure of justice is carried out? I for one do not in the least believe that once the Government is serious in this department there will be any real opposition.

MR. J. JOHN NIDIRY (*Changanachery cum Minachil*): May I know how the old man's problem was solved?

PRESIDENT: It is not relevant.

MR. K. C. MAMMEN MAPPILLAI (*Commerce and Industries, North*): He retired into private life. Of course, there have been attempts to prejudice the cause by saying that it is associated with the Congress and the *Satyagraha* movements and other things. I have read about the definition and implication of the *Satyagraha* movement by no less a person than Romain Rolland and today also I have had the great pleasure and privilege of hearing a member of this House and I leave it to the House to judge the difference.

MR. JOSEPH PANJIKARAN (*Shertallai*): May I ask him whether he remembers the fact that, when the spinning wheel resolution was introduced in this Council, he objected to it on the ground that it smelt something of the Indian National Congress?

MR. K. C. MAMMEN MAPPILLAI (*Commerce and Industries, North*): I did not object to the discussion of it. I said that I should be permitted to develop it in my own line. I do not myself claim to be a *Satyagrahi* or a Congressman nor am I prejudiced against it on the ground that it is connected with *Satyagraha* or Congress movement. Of course, if the Congress people enter into the country and create disturbance, our Government is strong enough to see that they are prevented from doing that. But if they carry out any legitimate measure of propaganda I think it is the glory of Travancore to allow everybody to have full liberty for discussion and propaganda just as we would like to have in any part of British India.

MR. JOSEPH PANJIKARAN (*Shertallai*): May I know whether he thinks *Satyagraha* movement a legitimate measure of propaganda?

MR. K. C. MAMMEN MAPPILLAI (*Commerce and Industries, North*): If it is unconstitutional, the Government know how to deal with it. Because it is associated with *Satyagraha* and Congress, it should not be allowed to prejudice the issue before the House. That is absolutely unfair. Therefore, I would humbly submit that, if such questions should be considered on their own merits, whether the permission to go along the road may lead to temple entry or not—these are extraneous matters, as Mr. Changanachery Paramesvaran Pillai said—in deciding on the merits of the case. If the request is granted, I am sure the heavens will not fall nor any other cataclysm will take place and

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the so-called popular turmoil will melt in no time. The dictates of natural justice and sentiments of common humanity surely are very insistent that this elementary right demanded by the Ezhava community and other depressed classes should be granted with readiness and alacrity. It would be a supreme lack of wisdom and foresight if we try to blot it out by means of legal quibbles and imaginary difficulty, which, if not met at this juncture in a conciliatory spirit, may prove to be a harbinger of unimaginable calamities and catastrophies in the future. Certain classes have seriously suffered social wrongs and social injustice. Let us not hesitate to make reparation so far as it lies in the power of every one of us to render adequate reparation by granting them the right to walk along the roads.

I therefore appeal to every member of this House not to view the question from a party standpoint or from a tactical advantage or from the advantage gained by this particular community or that section of the community or from the standpoint of prejudice and conservatism. I would request that every member should consider himself the representative of the voiceless depressed classes of our country (*Hear, hear*), put himself into the shoes of depressed classes and see that, if similar wrongs were inflicted upon them, what would have been their attitude, and that, without paying attention to the legal technicalities, should convey our expression of unprejudiced opinion to Her Highness the Maha Rani Regent; and let us try to see that Government is convinced that our recommendation is a correct one. I therefore once again request that every member will consider this question and vote for this resolution in this unprejudiced manner.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Let me submit at the outset, Sir, that I have very little to add by way of useful criticism to what has been said on the subject. My justification for standing up is that, in a momentous discussion of this character, I do not want to record a silent vote. It is my misfortune, Sir, that I could not follow in the footsteps of my friend Mr. Mammen Mappillai. It is my misfortune, Sir, that I have to oppose the resolution moved by Mr. Kumaran. It may be that, in consequence of my attitude, I may fail to secure, or I may lose the admiration of friends like Mr. Mammen Mappillai. I am very sorry for it. I should certainly be satisfied if he will respect the sincerity of my views. I said it was my misfortune to have to stand up and oppose the resolution. One reason is, personally, Sir, I am not a believer in the doctrine of untouchability or pollution. My Ezhava friends in this House know that it is not an assertion made for the purpose of scoring a tactical advantage in debate but that it is a plain statement of fact. Whether that frame of mind is the result of the western education that I have received or whether it is because by birth I am a humble follower of the great Vaishnavite reformer Ramanuja, who cried out from the turret tops of the Conjivaram temple, "If that poor Chandala is not to be saved, I do not want to be saved". This is my frame of mind and it was therefore I said it was my unfortunate lot that I could not follow in the footsteps of several of my friends, it was my unfortunate lot to have to oppose

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[Rao Bahadur K. A. Krishna Aiyangar.]

Mr. Kumaran's motion. The solution is very easy. From whose standpoint is the question to be answered? Is it from the standpoint of the social reformer, is it from the standpoint of the humanitarian or the political visionary or is it from an honest, careful examination of the actual facts of the case, facts disclosed by a careful impartial inquiry? That is the question that we have now to consider. There is no use in condemning Hinduism, the oldest surviving religion of the world, still an inspiration to the nations of the world. No use of insulting it either by bringing in the analogy of the cannibal dinner or the use of the public road by pigs and dogs. Is that your conception of Hinduism? If this is the conception of Hinduism.—

MR. K. C. MAMMEN MAPPILLAI (*Commerce and Industries, North*): I only said that it used to be so, thereby I did not imply anything.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): There is no use in my friend insulting me in the most positive form and then saying, "Of course I did not exactly mean what the words conveyed or what the story conveyed". Is that the attitude of Hinduism? I resist the temptation to be dragged into a controversy. Sir, any one who has made a comparative study of religions may, if he wants only to stir up bad blood, refer to several instances in the history of other religions in the world of which their most devout followers would be terribly ashamed. Hinduism might not be an exception. The question is, are we to approach it from that attitude of contempt? It is the earliest of the religions of the world and the earliest civilisation of the world that has survived the shock of ages, and I am perfectly confident that it will still continue to survive in spite of such occasional attacks. What I want my friends who do not agree with me to recognise is, that, in matters of faith, the intellect is the weakest instrument. You cannot reduce convictions of the heart to a syllogism of logic. No religion under the sun, Sir, will stand the analysis of modern science. One of the greatest figures in the history of the last century, Faraday, an honoured name, who contributed so much to the growth of our knowledge in the field of electricity and magnetism, was a very devout Christian. He was asked how, consistently with the conclusions of modern science regarding the evolution of the universe, the age of the world as fixed by astronomical calculations and geological investigations, how consistent with his belief in those conclusions he could reconcile his faith in the cosmogony of the Bible. Like the good Christian that he was, he answered "I prostrate my reason to my faith". That will be the answer of every Christian, of every Hindu, of every Mahomedan. Let us not therefore in pressing for removal of religious observances and institutions which make for separation, use language which will provoke controversy, widen the gulf rather than bring about rapprochement. If my friend Mr. Mammen will not misunderstand me, I felt while he was addressing the House that his well-meant labours for ensuring unity of feeling in the country were capable of producing a result which I am perfectly confident he never meant to produce.

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The question before the House is a very simple one. Why should he have strayed off to the barbarities of the middle ages, either in India, or out in Europe or for that matter religious inequalities that may be obtaining in human societies all the world over? The question that Mr. Kumaran submitted for our consideration is that the roads round the Vaikam temple and roads similarly situated should be thrown open to all classes of Her Highness' subjects. It is certainly a proposition that the House should consider in all humility, in all sympathy, to the best of its lights and form a conclusion. My friend Mr. Mammen fights shy of lawyers; instead of helping him to form a safe and a correct conclusion, he thinks they bring in "muddles and quibbles". (*Mr. S. Krishna Aiyar: Hear, hear.*) I am sorry that Mr. Mammen had not the advantage of a legal education when probably he would have appreciated the relevancy and importance of the arguments addressed by the advocates, in support of the resolution, and against the resolution. No use in saying "We do not want lawyers". What is the justification for this Council? What is this Council intended for? The fundamental purpose for which it exists is to create law which is just and when bad law is functioning, to get rid of it. If you think you can get rid of the legal element and always get a correct conclusion from a layman's point of view, from an illiterate man's point of view, I think friends on this side may make up their minds to give an honest trial to persons whose main qualification is that they are illiterate. If that is Mr. Mammen's idea of education—I am subject to correction—if my friend tells me that I am misinterpreting or mis-reading him, I shall unconditionally apologise. That is my reading of the matter.

MR. K. C. MAMMEN MAPPILLAI (*Commerce and Industries, North*): That is not my reading of the matter. It is not my wish to ignore lawyers.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): That is the implication.

MR. K. C. MAMMEN MAPPILLAI (*Commerce and Industries, North*): That was not what I meant.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I do not want to quarrel with my friend.

I say it is not a violent inference that I draw when you set up an, absolutely irrelevant, uncalled for attack on lawyers as a body, and say that their pastime is to indulge in quibbles and muddles. (*Mr. G. Paramesvaran Pillai: Hear, hear.*) In the interests of the profession which I have learnt to love so well, I must enter my respectful, emphatic protest. You cannot get rid of the difficulties by merely saying, "why not leave those legal technicalities? Don't you worry yourself with what the High Court said".

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[Rao Bahadur K. A. Krishna Aiyangar.]

There is no use in being told to approach it through short cuts. No use in saying "you should use my coloured glass, banish sense out of consideration. Just see whether, after all, you have not been misbehaving in the past; are you not bound to compensate"? What I regard as the most objectionable feature was the threat of revolution. If there is any Government functioning in the land, it is its legitimate duty to maintain peace and order. I am not going to be frightened out of my judgment simply because I am told that, if I do not vote in a particular way, we should be smashed. It would be a most unlucky day in the history of Travancore. I do not believe that we are quite so rotten, that Hinduism has failed in its purpose of keeping up a very high ideal for the world to follow. I do not for a moment believe that the day of the revolutionary will ever come in Travancore. Suppose it does come, is it an argument for us to surrender our judgment, if as a matter of fact on a dispassionate examination of the whole question you adopt a hostile view? Is it Mr. Mammen's suggestion that the *Satyagrahis* or others on whose behalf they are undergoing so much suffering are people who will adopt the role of a contemptible revolutionary? Enough unto the day is the evil thereof. I have infinite confidence in the capacity of Mr. Pitt and his successors to back us against any outbreak of violence in the land. It was pressed by more than one individual. Among the advocates of the resolution, Mr. Kumaran was the only one labouring under a sense of personal wrong and yet he spoke with absolute self-restraint and sobriety as he knew as a lawyer that threats do not weigh with the judge. Like the practised lawyer he was, he summed up a series of points and asked the House from those circumstances to draw the conclusion that he was entitled to the relief that he asks for at the hands of the House. I respect that, Sir, I appreciate it though I differ from it. But I do not appreciate the idea of force; and if there is one thing that these *Satyagrahis* are not guilty of, it is violence. There is no use our ignoring for the purpose of argument that the motion before the House has absolutely nothing whatsoever to do with the *Satyagraha* movement started at Vaikam. No doubt I perfectly recognise that this agitation for getting rid of disabilities of certain communities in using public roads is of a much earlier date. But the attempt not to take advantage of the constituted judiciary in the land is the direct result of the non-co-operation movement and the *Satyagraha* movement which was started at Vaikam. What are the facts that are now placed before the House? Let us for a moment clear our minds of all temporary excitement that might have been caused by unparliamentry, by undignified reference to one's religion, to one's ideals. Vaikam road, according to the resolution, is a public road. Under the notification issued by Government, it is open to all classes of Her Highness' subjects. About twenty years ago a notice board was put up prohibiting entry of a particular class of people who are spoken of as untouchables. That is a social wrong. It is a grievous wrong. Let us have some remedy. That is the argument on one side. On the other side, it is contended

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that it is not a public road. It is not comprised in the roads declared to be accessible to all classes of the public by an earlier proclamation. There has been a judicial order. The party aggrieved must go to a court of law. That is the other view. Until the advent of the *Satyagraha* movement, that was the procedure that we were following and that is how we were establishing our rights. There is nothing to prevent us, Sir, from carrying on a social reform agitation in all parts of the country in a perfectly constitutional manner, in a perfectly non-violent manner. When the matter has been taken cognisance of by a judicial tribunal and rightly or wrongly an order has been passed—legal convention demands we must assume it to be correct—when an order of that nature has been passed by a duly constituted tribunal, our friends want us to ignore it and declare by an executive order that these roads should be thrown open to all classes and communities.

MR. A. HOOGEWERF (*Nominated*): Have the Government declared these roads as public roads?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Government have not declared Vaikam road to be a public road. (*Laughter.*)

MR. A. HOOGEWERF (*Nominated*): Sir, is it declared to be not a public road?

RAO BAHADUR K. A. KRISHNA AIYANGAR: (*Nominated*) (*Deputy President*): I think no useful purpose will be served by answering my friend. If he thinks that he can obstruct the trend of my thought by a series of interruptions at every stage, let me assure my friend that he will be disappointed. (*Laughter.*) If it is a request for an information which he has not already received from those whose misfortune it is not to agree with him in his views—(*Hear, hear*) (*Laughter*).

MR. A. HOOGEWERF (*Nominated*): I take it as an insinuation in the statement that I am maliciously interrupting or something of the kind.

PRESIDENT: No, it is not that. (*Laughter.*)

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): If my friend thinks that the trend of my argument can be upset, it is perfectly a legitimate move in the field of debate (*Laughter*). We do have such a thing in a court of law.

MR. A. HOOGEWERF (*Nominated*): That is not my purpose.

PRESIDENT: It will have the very likely consequence of doing it.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I am prepared to stand all bombardment.

MR. A. HOOGEWERF (*Nominated*): It is not my intention to bombard him.

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[Rao Bahadur K. A. Krishna Aiyangar.]

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): With questions, of course. (*Laughter.*) I may tell my friend that I do not attach any sinister significance to his interruptions.

Now the parties have joined issue on that fundamental question. Vaikam road is a public road. That is the statement on the one side. Vaikam road is not a public road. That is the statement on the other side. Facts and circumstances have been adduced by Mr. Kumaran in support of his contention. He said that there was a tradition that four Ezhava families supplied firewood to the Vaikam temple at the four gates necessarily implying that they must have taken it at least up to the entrance of the gate. It stops as a mere tradition. When that custom ceased Mr. Kumaran has not been able to tell us. Whether it is some time in 600 M. E. or in 700 M. E. or in later times he has not told us. In any event, what we have now to take note of is that, within recent times, within a period of 20 or 30 or 40 or 50 years, it does not appear that the representatives of the community to which he belongs were allowed to use the temple roads. This circumstance is referred for establishing that it is a public road, that the present prohibitory order is a serious infringement of their vested rights. It is in support of that distinct position they say that there is a tradition. It stops with a tradition. We cannot build anything on an old tradition. Another circumstance he referred to was the existence of a temple in the neighbourhood of the Vaikam temple, the Kalakal temple, which is meant for the exclusive use of the Ezhava community in the locality for purposes of worship as they could not get into the Vaikam temple for worship. That is a subordinate temple (*Keezheedu*) of the main temple, the expenses of the former being defrayed from the Vaikam temple itself. He said that *pooja* is performed by an Ezhava priest in that temple. It is a fact. But it is not anywhere in the roads which form the subject of the resolution. It was never suggested that people who went to the Kalakal temple for worship used these approach roads round Vaikam temple. It had a distinct path of its own. Those are two circumstances. So the neighbourhood of a temple under the subordination of the Vaikam temple which finances it does not point to the conclusion that these approach roads were used by his castemen for worship. He did not definitely allege that either. On the other side the facts alleged are that for years together it has not been used by members of his community. Then the instance of trees marked P. W. D. was mentioned. Mr. Subba Aiyar said that it was a mistake. P. W. D. never collected income from those trees. Some of my friends questioned the correctness of that. They need not have done it. As Mr. P. K. Narayana Pillai put it, whether it was collected by P. W. D. or Land Revenue Department, it was collected by a Government Department. Whatever it is, the essential character of a public road is whether it is a King's highway; whether the income was collected or not by the Revenue Department, the question is not of much value. Then the

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question of its being vested in the Municipality was raised. It was alleged that the roads were cleaned and lighted by the Municipality. Mr. Subba Aiyar said that the land was never vested in the Municipality. No doubt it was lighted by the Municipality. That is perfectly consistent with its not being a King's highway. So far we have been dealing with facts. The question has to be approached from two distinct standpoints. Is it the restoration of an actual right, is it the declaration of an actual right the exercise of which is prohibited by the magistracy or is it the creation of a right for the first time? If it is the latter, the Council can consider it. If the former, then we go into the question of facts. With very great submission I must say, Sir, the Legislative Council can lay down a policy for the guidance of the Government. It cannot go into the question of facts of a particular controversy when there is no agreement between the contending parties. At every stage an allegation is made on the one side and it is denied by the other and it was therefore, I submitted, the constitution of this House does not permit of its holding an inquiry in a way in which an enquiry should be held and conclusions reached. I am prepared to submit the settlement of that question, to an ordinary court. I do not want a Brahman judge, I do not want a Nayar Judge. I have no objection to the case being tried by one whose sympathies are with the community to which Mr. Kumaran belongs. I have no objection to the question being tried by a Christian judge or by an Ezhava Judge. There is the guarantee that both sides let in evidence, witnesses are examined and they are cross-examined, documents are filed, arguments are heard, conclusions are formed. Then, they can take it to the highest tribunal and if the highest tribunal in the land says it is a public highway in the sense in which that word was used in the earlier notification, they are entitled as subjects of Her Highness the Maha Rani to go through the Vaikam temple roads, it is the duty of the Government to uphold that view whatever be the force that may be mustered by the opponents. The Executive Government exists for enforcing the decrees of the judiciary. The Executive Government does not exist for nullifying the decree of the judiciary. It is open to the legislature to get rid of what it considers to be obnoxious law. The Executive Government as such is bound to carry out the decisions and mandates of a civil court, that is the ultimate bulwark of popular rights whether as between individuals or between individuals on the one hand and the Government on the other. What is the implication of our now being called upon to ignore it? I think it is really an unconstitutional precedent that this House will be taking if, on the strength of the arguments advanced by the members of this Council, a conclusion is reached that it is a public highway or that it is not a public highway. Mr. Narayana Pillai was asking whether we cannot start with the presumption that it is a public road and as such open to all classes of Her Highness the Maha Rani's subjects, because the Royal Proclamation assuming the management of Devaswoms directed that all Devaswom properties shall thereafter be regarded as Pandaravaga land. I am not convinced. I am just submitting that it

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[President.]

does not strike me as necessarily concluding the controversy. The Devaswom management was assumed by the Government in the early years of the 19th century, soon after the military occupation of Travancore by the British power. These ancient Hindu endowments were assumed in the name of efficient management. But really I may be permitted to say it was with the express object of breaking up the power of the Uralars in different parts of the country who were exercising quasi-sovereign rights within their Sanketham limits. If that assumption was an act of confiscation as the paramount power, the question of trusteeship would not arise. If it was as the supreme trustee in the State for the better management of charitable institutions, the trust is there and therefore the trustee cannot make any alteration in the incidents of the original endowment.

Unfortunately the majority took the first view. My friend Mr. P. K. Narayana Pillai, who was in a minority of one, said that the Government was only a trustee.

That was the expression of opinion made by successive Dewans of the State and by the High Court in several cases that came up before it. Perhaps the Government felt that if they definitely assumed the position of a trustee, there might be difficulties. Their action might be called in question in a law court. On the other hand if they claim to hold them in their sovereign power independent of all trusteeship, their action cannot be called in question. Mr. Narayana Pillai's assumption as a matter of fact is that it has become an absolute Government property. These approach roads have become Government property and as it has become Pandaravaga it must be a thorough public way. There is no legal basis for that inference. There are in the State *poramboke* lands of various descriptions some of which would fall under the category of King's highway and some of which would not fall under that category, both of them really belonging to the State. The incidence of its being thrown open to all sections of the community does not necessarily result from its being Government land. It is Government land, all these *Gramaveethis*, public roads and public highways etc. There is no legal basis for the contention.

The further objection urged in this House was the religious one. A section of the community at Vaikam honestly believes that it is an interference with their religious usages. It was with reference to that contention the analogy of the dogs and pigs and cannibals was dragged in. That is not fair dealing. What is religious or what is not religious does—

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is the resolution likely to be put to vote to-day?

PRESIDENT: It is not likely. There is Mr. Kumaran and there is Mr. Subba Aiyar. They have their right of reply.

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : It is now half past five.

PRESIDENT : How long will you take?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : I am a bad prophet here.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : Some of us have got to attend a social function.

PRESIDENT : Then we will rise now.

The Council adjourned at 5-25 P. M.

T. P. RAMASUBBA AIYAR,

Secretary to the Legislative Council.

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